

EXHIBIT 6

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT
OF PENNSYLVANIA

* * * * *

BENEZET CONSULTING, LLC	*
and TRENTON POOL,	*
Plaintiffs	* Case No.
vs.	* 1:16-CV-0074
PEDRO A. CORTES and	*
JONATHAN MARKS,	*
Defendants	*

* * * * *

DEPOSITION OF
JACOB WITMER
September 26, 2016

ORIGINAL

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DEPOSITION

OF

JACOB WITMER, taken on behalf of the Defendants herein,
pursuant to the Rules of Civil Procedure, taken before
me, the undersigned, Bernadette M. Black, a Court
Reporter and Notary Public in and for the Commonwealth
of Pennsylvania, at the Office of Attorney General,
13th Floor, Strawberry Square, Harrisburg,
Pennsylvania, on Monday, September 26, 2016, beginning
at 2:02 p.m.

A P P E A R A N C E S

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P R O C E E D I N G S

JACOB WITMER, HAVING FIRST BEEN DULY SWORN, TESTIFIED
AS FOLLOWS:

EXAMINATION

BY ATTORNEY JOEL:

Q. Mr. Witmer, my name's Kenneth Joel. I'm with the
Office of Attorney General. My colleague and I ---.
My colleague, Nicole Radziewicz, and I represent the
Defendants in this case. Have you ever been deposed
before?

A. Yes.

Q. Okay. How many times?

A. I believe just once. Unless it happened much
earlier in my petitioning career. But in 2014 is the
only time that I can remember being actually deposed.

Q. Was that in connection with a petitioning matter?

A. Yes.

Q. What was the issue?

A. My petition signatures for valid access for the
Illinois Libertarian Party were successful defended in
2014.

Q. So let's just unpack that a little bit. You
collected signatures for a Libertarian candidate in

1 Illinois?

2 A. No. Not per se, for the entire state slate.

3 Q. Okay. So you collected signatures in Illinois for
4 the 2014 election for a slate of Libertarian
5 candidates?

6 A. Correct.

7 Q. And somebody challenged that, whatever the process
8 is in Illinois, challenged your ---

9 A. That's correct.

10 Q. --- collection of signatures?

11 A. It's a challenge state that used to work, as far
12 as I know, similarly to Pennsylvania.

13 Q. Okay.

14 A. An independent citizen challenged that, allegedly,
15 but generally they're a front for somebody else, ---

16 Q. Okay.

17 A. --- one of the major parties.

18 Q. So somebody challenged that and then you were
19 deposed in connection with that?

20 A. Yes.

21 Q. Where did that deposition take place?

22 A. It took place remotely, while I was in Wyoming.

23 Q. Were you in Wyoming collecting signatures on
24 another campaign? Is that what you were doing then?

25 A. That's correct. It was via videoconference.

1 Q. And who was conducting the deposition? Was it an
2 attorney for the individual who had challenged your
3 signatures?

4 A. I believe so, yes.

5 Q. Okay. Do you know when in 2014 that deposition
6 took place, what month?

7 A. Summer time, it'd be in the middle of summer. I
8 don't remember precisely, but it would have been after
9 the petition deadline, which is, let me see. I think
10 the petition deadline is ---. It's either the 27th of
11 June or 27th of July. I don't remember ---

12 Q. Okay.

13 A. --- precisely. I think it would have been after
14 the 27th of July that I was deposed.

15 Q. Okay. Can you give me a sense as to how far ---
16 how long after the petition deadline that took place?
17 Was it a week? Was it two weeks? Was it a month?

18 A. I think it was about a month, a little more maybe.

19 Q. Did you have to travel back to Illinois to
20 participate in any way, shape or form with that
21 challenge process or was the deposition all?

22 A. It was a videoconference entirely.

23 Q. Okay. So that deposition was all ---? You didn't
24 have to go back to Illinois and appear in court or do
25 anything like that, you just had your deposition taken?

1 A. That's correct.

2 Q. Do you know how ---? You said it was successfully
3 defended. So your signatures were ultimately held, at
4 least as many as needed to be to get the slate on the
5 ballot?

6 A. That's correct.

7 Q. Do you know how many signatures you had collected
8 in that matter?

9 A. I don't recall. I'm a traveling petitioner. I
10 collect lots and lots of signatures on different
11 campaigns.

12 Q. Okay. So you've been deposed. You probably know
13 somewhat what's going to happen. Let me give you a few
14 rules that I usually like to use. It'll make this go a
15 little more smoothly. Answer all my questions
16 verbally. Yes, no, whatever explanation you want to
17 give is fine. Stay away from nonverbal communication.
18 The shrugs, the uh-huh, the uh-uh, because A, it's hard
19 for our court reporter to take it down, and B, it's
20 even harder for us to discern what you meant by a shrug
21 in a couple of months from now. Okay?

22 A. Yes, I understand.

23 Q. If at any point you don't hear me, please ask me
24 to repeat the question and I will do so. Is that okay?

25 A. Yes.

1 Q. And if at any point you don't understand, you
2 can't make sense of what I'm asking, let me know. Let
3 me know what you find confusing. I'll be happy to
4 rephrase it. I want to make it understandable for you.
5 Okay?

6 A. Yes.

7 Q. Can we agree, then, that if you do answer you not
8 only heard me, but you've answered and you've
9 understood and you've answered truthfully to the best
10 of your knowledge?

11 A. Yes.

12 Q. Very good. If at any point you'd like to take a
13 break, that's fine. The only thing I ask is that you
14 answer whatever question is on the table and then we
15 take a break. Okay?

16 A. Yes.

17 Q. What is your full name, please?

18 A. Jacob Carson Witmer.

19 Q. And where do you live?

20 A. Anchorage, Alaska.

21 Q. What's your address?

22 A. 6402 Hampton Drive, Anchorage, Alaska, 99504.

23 Q. And I saw in some Interrogatory responses, and I
24 can give those to you, a Des Plaines, Illinois address;
25 is that accurate?

1 A. That's a mailing address.

2 Q. That's a mailing address?

3 A. Correct.

4 Q. What does that mean for you?

5 A. That's where my mail goes.

6 Q. Okay. And what's that address?

7 A. I stop off from time to time there to pick up my
8 mail there.

9 Q. No, no, no. What is that address in Des Plaines,
10 Illinois?

11 A. It's a house.

12 Q. What's the physical address?

13 A. I'm sorry.

14 Q. Does it have a number and a street?

15 A. Yeah. I'm sorry. I thought since you said that
16 you had seen the Des Plaines address ---.

17 ATTORNEY ROSSI:

18 No, he's asking a question.

19 A. Yes. 1319 Everett Avenue, that's E-V-E-R-E-T-T
20 Avenue, Des Plaines, Illinois, 60018.

21 BY ATTORNEY JOEL:

22 Q. So you get all of your mail sent to the Des
23 Plaines, Illinois address, but your legal residence is
24 in Anchorage, Alaska?

25 A. Correct.

1 Q. Okay. How long have you had your legal residence
2 in Anchorage, Alaska?

3 A. Since 2005.

4 Q. And how long have you had your mail going to
5 Des Plaines, Illinois?

6 A. Since the same time in 2005.

7 Q. Now you said it was a house. Do people live
8 there?

9 A. Yes.

10 Q. And you just have your mail delivered there?

11 A. Yes.

12 Q. Are they relatives of yours or ---?

13 A. Yes.

14 Q. Okay. Who?

15 A. My mother.

16 Q. Anybody else live there or just your mother?

17 A. No, just my mother.

18 Q. There was some ---. Have you ever lived in the
19 State of Indiana?

20 A. No. Except visiting a friend. And except --- I
21 suppose I should rephrase that. I lived there several
22 months when I was petitioning there, ---

23 Q. Okay.

24 A. --- in a hotel.

25 Q. Other than living in a hotel --- well, strike

1 that.

2 Your legal residence has never been the State of
3 Indiana?

4 A. Correct.

5 Q. And where you get your mail has never been the
6 State of Indiana?

7 A. Correct.

8 Q. What do you do for a living?

9 A. Petition.

10 Q. What does that mean?

11 A. And sometimes I'm a consultant on petitioning
12 drives as well.

13 Q. Okay.

14 A. I petition signatures to place candidates and
15 initiatives and referenda on the ballot.

16 Q. How long have you been doing that for?

17 A. Since 2000, on and off. Or 2002, on and off.

18 Q. What do you mean by on and off?

19 A. I've had other jobs as well, ---

20 Q. Okay.

21 A. --- in nonelection years, generally.

22 Q. So let's start, I guess, at 2002. What candidates
23 or referenda or parties or anything like that did you
24 collect for in 2002?

25 A. I placed the Michigan Libertarian Party on the

1 ballot.

2 Q. And is that on the general election ballot, is
3 that our primary election ballot? How did that work?

4 A. That was for the --- I believe ---. I know that
5 it was the general election ultimately. So I don't
6 believe that they had any primaries, but I believe that
7 my petition signatures, had they run people in the
8 primaries, they may have been able to do so based on
9 prior totals.

10 Q. Okay. So when you say you got the Michigan
11 Libertarian Party on the ballot, what do you mean by
12 that?

13 A. I collected the final 2,000 signatures that they
14 needed to push them over the top in the wintertime.

15 Q. And you said wintertime. When were you in
16 Michigan collecting those?

17 A. I don't recall exactly.

18 Q. Okay. Did you do any other petition signature
19 gathering in the 2002 election cycle?

20 A. Not sure if I did. I believe I did Kentucky for
21 the 2002 cycle, but I don't know, it could have been
22 done in 2003. I don't know. I can't recall.

23 Q. What were you doing in Kentucky? Was it for
24 candidates? Was it for parties? Was it for referenda?
25 What was it for?

1 A. Three Libertarian candidates. I think it must
2 have been 2002. Someone has told me that it has been
3 2002, but it seems like it was 2003 to me, so I don't
4 know.

5 Q. Okay. Any other ---?

6 A. I don't recall the minutiae of every drive I've
7 worked on for the past however many years in great
8 detail.

9 Q. And that's because you've done a lot of them?

10 A. Yes.

11 Q. Okay. We'll get into some of them. Give me your
12 best memory. Okay?

13 A. Okay.

14 Q. Did you do any other collections in the 2002
15 election cycle?

16 A. Not beyond Michigan and/or Kentucky.

17 Q. How about 2003?

18 A. Oh, I'm sorry. I did Illinois as well.

19 Q. What did you do in Illinois?

20 A. Libertarian again.

21 Q. Was that for candidates or for the party?

22 A. The party. And I believe that there were some
23 candidates in addition that also then obtained valid
24 access as a result that were not a part of the
25 statewide slate. And that's usually the case, is that

1 the statewide slate enables some candidates to gather
2 their signatures in addition.

3 Q. Okay. Any others? You mentioned Michigan,
4 Kentucky, maybe 2002 or '03, and then Illinois. Any
5 others in the 2002 cycle that you can remember?

6 A. No.

7 Q. How about 2003, recognizing Kentucky might have
8 been that year. So any others in 2003?

9 A. No. I was doing a significant number of side jobs
10 for that ---. Actually, yeah, in 2003 I know that I
11 was also in Arizona and Maryland.

12 Q. What were you doing there?

13 A. Same thing, party ballot access.

14 Q. So collecting signatures to get parties on the
15 Arizona ballot and on the Maryland ballot?

16 A. Yeah, to gain party ballot access.

17 Q. What party?

18 A. Libertarian Party.

19 Q. Anything else in 2003?

20 A. Not that I recall.

21 Q. Okay. How about 2004?

22 A. 2004 I worked several states. I don't even know
23 if I can name all of them from memory.

24 Q. Do as many as you can.

25 A. And this is for the 2004 election cycle. So some

1 of them may have gained ballot access during 2003 ---

2 Q. Uh-huh (yes).

3 A. --- from the work that I did. So it's a two-year
4 cycle.

5 Q. Right. Thank you for clarifying that. When I'm
6 talking about these years, I'm more interested in the
7 November election. So what work was done to get to
8 there? I presume some of the states, depending on what
9 it is, there might be some of the work is done in 2003
10 for this one ---

11 A. Okay.

12 Q. --- et cetera. Sot that's what I'm looking at.

13 A. I'll name as many as I can.

14 Q. Sure.

15 A. Let me see. Illinois, Alabama, Pennsylvania, New
16 York, Connecticut. There were more than that, though.
17 I don't know. It escapes me at the moment ---

18 Q. Okay.

19 A. --- if I worked anywhere else.

20 Q. Okay. Who were you gathering signatures for?
21 Let's take them one by one. In Illinois?

22 A. Libertarians, all states.

23 Q. Okay. So in Pennsylvania you were collecting
24 signatures for a Libertarian candidate for presidency
25 or for other offices as well or ---?

1 A. Yes. Although before the convention we did not
2 know who it was for, for the presidency.

3 Q. So the signatures you were collecting in 2004 were
4 all for Libertarians. What offices were they for?

5 A. In all cases statewide party ballot access.

6 Q. What does that mean?

7 A. It means that the Libertarian Party is considered
8 a minor party before they gain access to the ballot.
9 And they're considered a minor party with ballot access
10 or a major party or candidates that have valid access
11 after the petition signature gathering is completed.

12 Q. Okay. And do you know how many signatures you
13 were able to collect in Pennsylvania that year?

14 A. I don't know.

15 Q. Were you able to collect signatures in
16 Pennsylvania?

17 A. Yes, I was.

18 Q. Did you have somebody come along with you as a
19 witness?

20 A. Yes.

21 Q. Where did you collect in the Commonwealth?

22 A. In Pittsburgh.

23 Q. When you were collecting in the Commonwealth, did
24 you stay in a hotel in Pittsburgh?

25 A. I believe I did.

1 Q. Okay. How long were you in Pennsylvania for to
2 collect those signatures?

3 A. Only a couple of weeks, three weeks. There was a
4 large push before the deadline, so I wasn't here long.
5 I believe it was immediately after the amount
6 sufficient to qualify, then gather it in Illinois.

7 Q. Okay. The signatures you collected in Pittsburgh,
8 were you able to get those notarized?

9 A. Yes.

10 Q. And do you know if any of the people who signed
11 those petitions had also signed other petitions?

12 A. I believe that they had not because that would be
13 in violation of your law here, ---

14 Q. Okay.

15 A. --- if I recall.

16 Q. So the signatures you were able to collect ---
17 strike that.

18 So you were able to collect signatures with a
19 witness, get them notarized and only the elector
20 signing one petition?

21 A. Yes.

22 Q. You were able to do that? Okay. Now, you
23 mentioned in ---. What time frame were you in Illinois
24 that year, 2004, collecting?

25 A. It would have been right before the legal

1 deadline.

2 Q. Which is?

3 A. I believe June 27th.

4 Q. How many weeks were you there before June 27th, do
5 you know, or months?

6 A. It was June or July. It's terrible that I can't
7 even remember that now. I can't. I'm sorry.

8 Q. Okay. Whether it was June or July, how much time
9 were you spending in Illinois to collect your
10 signatures?

11 A. I believe it was just a month or so.

12 Q. Was Alabama before or after Illinois?

13 A. It was after.

14 Q. And how much time did you spend in Alabama?

15 A. I believe it was about a month.

16 Q. And was Pennsylvania ---? Where does Pennsylvania
17 fall into that time frame?

18 A. It might have been less than a month in Alabama,
19 because it was all very hurried. Either a couple of
20 weeks --- between one-and-a-half weeks to probably a
21 month in each case. And so they just kind of ---.
22 They happened immediately when one ends and the next
23 begins.

24 Q. Okay. So do I understand you that when ---? So
25 you were in Illinois for about a month or so. When

1 that ended you went immediately to Alabama?

2 A. No, I believe I went to Pennsylvania ---

3 Q. Okay.

4 A. --- and then Alabama. Because Alabama's deadline
5 is later or at least it was. And now they've moved it,
6 they've changed it to be an earlier deadline, so we
7 don't have access to the universities.

8 Q. So Illinois you were there about a month or so
9 before the deadline --- before the filing deadline,
10 collecting signatures; correct?

11 A. Yes. To the best of my knowledge that's correct.

12 Q. Immediately after Illinois you went over to
13 Pennsylvania and collected signatures; correct?

14 A. Yeah, I think so.

15 Q. And you were there for about three weeks?

16 A. I think so. Although don't hold me to that, but I
17 don't remember exactly the exact dates, so ---.

18 Q. After Pennsylvania, did you then go to Alabama
19 immediately to start collecting signatures?

20 A. I don't believe so. I believe I went to
21 Connecticut ---

22 Q. Okay.

23 A. --- and then to Alabama.

24 Q. Or actually it could have been to New York and
25 then Connecticut. I don't know if I went to

1 Connecticut before I went to New York or not. I don't
2 recall.

3 Q. Okay. So piecing this together, is the order of
4 states that you did in 2004 Illinois, Pennsylvania, New
5 York or Connecticut, then the other one, then Alabama?

6 A. That sounds correct.

7 Q. Okay. And you were in Illinois for about a month
8 prior to the June or July filing deadline; correct?

9 A. I believe so.

10 Q. And you were there collecting signatures; correct?

11 A. Yes.

12 Q. And then when that was over you went to
13 Pennsylvania and worked there for about three weeks
14 collecting signatures; correct?

15 A. I believe so, yes.

16 Q. And then from Pennsylvania did you go right on to
17 either New York or Connecticut, whichever was the next
18 state in line?

19 A. Yeah.

20 Q. And how long were you at either New York or
21 Connecticut for that next stint?

22 A. I believe New York was just a couple of weeks.

23 Q. Okay.

24 A. That's the only thing that strikes out --- stands
25 out in my memory, really.

1 Q. And then how long were you, then, in Connecticut,
2 if that was the next state?

3 A. I believe just a couple of weeks.

4 Q. Okay.

5 A. Maybe shorter --- a week.

6 Q. And then did you go from New York straight to
7 Connecticut?

8 A. I don't ---.

9 Q. Or go straight to New York?

10 A. I don't recall.

11 Q. Regardless of which way the order was, did you go
12 from one state immediately to the next state, ---

13 A. Yes.

14 Q. --- to collect signatures?

15 A. Yes.

16 Q. And then from whatever that last state was, either
17 New York or Connecticut, did you go immediately to
18 Alabama to start collecting signatures?

19 A. I believe so.

20 Q. And how long were you in Alabama collecting
21 signatures?

22 A. Probably a couple of weeks. Because I think if
23 you string it all together I couldn't have been in any
24 of these places ---. I couldn't have been in each of
25 these places for more than two weeks.

1 Q. Okay.

2 A. Because the final deadline I believe it's
3 September something or it was in Alabama at that time.

4 Q. And the states you just gave me, Illinois,
5 Pennsylvania, New York, Connecticut, Alabama, might
6 there be others that you worked in for the 2004 cycle
7 and that's all that you can remember now or is that
8 a ---?

9 A. It's possible. It's possible. Although I believe
10 that --- you know, I just try and keep track of all the
11 states that I've worked in. And I know that it was
12 like later I worked in Missouri and several other
13 states for initiative and referenda. But I believe
14 those are the only states that I worked in, you know,
15 for the 2004 general election ballot access.

16 Q. Okay. 2005, did you work ---? For the 2005
17 election, did you collect signatures anywhere?

18 A. Not precisely, per se, for the 2005 general
19 election, because I was doing party ballot access
20 that's open-ended ballot access via the registration
21 process in ---. Oh, yeah, you know, I left out that it
22 was the registration process in 2003 as well. So it
23 wasn't purely petition signatures in 2003 either, it
24 was just largely petition signatures.

25 Q. Okay. And what do you mean by this registration

1 process, getting people to sign up to register to vote?

2 A. Many states, especially the western states, do
3 party ballot access by the number of registrations a
4 political party has in their name. So I would ask
5 people to register as Libertarians to gain Libertarian
6 Party ballot access.

7 Q. Got it.

8 A. Or if I was a Republican and I was working for the
9 Republicans, I could have done that for the
10 Republicans ---

11 Q. Okay.

12 A. --- as well, had they not already had ballot
13 access.

14 Q. So 2005 you worked on some party ballot access, I
15 assume, also for the Libertarians?

16 A. Yes.

17 Q. Anybody else or just the Libertarians?

18 A. Only the Libertarians.

19 Q. 2006 election, did you collect signatures for that
20 election ---

21 A. Yes.

22 Q. --- for issues, people, anything like that?

23 A. Yes.

24 Q. Yes? Okay. What states?

25 A. Some of these I did volunteer, passing through

1 states as well, just to gain the knowledge of the
2 state.

3 Q. Okay.

4 A. I did Missouri, Montana and Oregon for Americans
5 for Limited Government and Citizens in Charge, a set of
6 initiatives that were all initiatives to limit
7 government power. There were three of them. And I did
8 Libertarian registrations in every state that I did the
9 initiatives in, where that was an option, as well for
10 free as a volunteer.

11 Q. So in Missouri, Montana and Oregon?

12 A. Yes.

13 Q. Okay.

14 A. And Alaska in 2006.

15 Q. Alaska you did Libertarian?

16 A. I did initiatives there as well.

17 Q. So in 2006 you did signature collecting for
18 initiatives in Missouri, Montana, Oregon and Alaska?

19 A. Yes, that's correct.

20 Q. And you also did signature collecting for party
21 ballot access for Libertarians in Missouri, Montana,
22 Oregon, Alaska in 2006?

23 A. Yeah. It's a much smaller number than ---.

24 Q. I'm sorry, we're on 2005.

25 A. No, no, we're on '06.

1 Q. Oh, we're on '06? Okay. Go ahead. Sorry.

2 A. No worries.

3 Q. You were about to say something, I'm sorry, I cut
4 you off.

5 A. I did a smaller number of registrations than if I
6 was there to purely do registration works and just due
7 to me spreading information about the Libertarians.

8 Q. Okay. 2007, did you do any signature collecting?

9 A. No. I may have done, I don't know, one drive or
10 something like that, a small amount of work. I don't
11 know the exact ending dates. Sometimes the dates ---.
12 If it was in the winter it might have overlapped
13 into ---. I don't think so, though.

14 Q. All right. How about the 2008 election cycle?
15 Did you do any signature collecting that year?

16 A. Yes. Oh, and I also in 2006 did Illinois, ballot
17 access.

18 Q. And did you do Illinois Libertarian signature
19 gathering as well in 2006?

20 A. In 2006?

21 Q. Yeah.

22 A. That's correct. That's what I had just mentioned.

23 Q. Oh, I thought it was ---. Oh, okay.

24 ATTORNEY ROSSI:

25 LP is short for Libertarian party.

1 ATTORNEY JOEL:

2 Okay.

3 BY ATTORNEY JOEL:

4 Q. In 2006 in Missouri, Montana, Oregon, Illinois and
5 Alaska, can you give me the order of states
6 chronologically that you went through?

7 A. I don't remember. I can give you the
8 chronological order of a couple of them. Or not the
9 chronological order, but I can give you the relative
10 order of a couple of them.

11 Q. Okay. Why don't you do that then.

12 A. Missouri was first, I think, and then Montana.

13 Q. Okay.

14 A. And I believe then Oregon.

15 Q. Okay.

16 A. I could have Montana and Oregon flipped, though.
17 I don't really know. It's kind of a blur at this
18 point. Sorry.

19 Q. How much time did you spend in either each of
20 these states doing your collection or in the aggregate
21 for the 2006 year?

22 A. That's a good question. I think it was no more
23 than three to four months.

24 Q. And jumping back to 2004, when you were in all of
25 those states, were you staying in hotels at those

1 states?

2 A. That's correct.

3 Q. And what was your average day like in terms of
4 signature collecting? Up at 7:00, turning in at 10:00,
5 collecting these things. What was your average work
6 day like?

7 A. It fluctuates quite a bit.

8 Q. Can you give me a range?

9 A. Usually a hundred signatures per day is what is
10 considered professional, so I believe I was generally
11 above that, because I was generally higher than what
12 was generally considered professional. And a good day
13 is a couple hundred. A really good day is 300 to 400.
14 If I was the first person at a university, then a good
15 day would be considered 300.

16 Q. And did you go ---? In those states that you
17 mentioned in 2004, Illinois, Alabama, Pennsylvania, New
18 York, Connecticut, did you go to different locations
19 around each state or were you just in one place for all
20 of your signature gathering?

21 A. Always different locations.

22 Q. And you'd stay at different hotels, depending on
23 the location?

24 A. Yes.

25 Q. Within each state. So, for example, in Illinois.

1 Let me ask it this way, in Illinois do you know how
2 many locations your hit in 2004?

3 A. I don't know.

4 Q. Okay. But if there were more than one location,
5 you'd be at a different hotel for each location?

6 A. Maybe not in Illinois, because I might have stayed
7 with my mother or stayed with my brother or relatives
8 as well.

9 Q. Okay. How about in Alabama? Do you know how many
10 locations you hit in Alabama in 2004?

11 A. I think I was pretty much at the same place the
12 whole time, because they're --- or no, no, no. That's
13 not the case. I did work in Montgomery a little while
14 and Tuscaloosa, ---

15 Q. Okay.

16 A. --- so just two.

17 Q. And did you stay in different hotels, depending on
18 whether you were working Tuscaloosa or Montgomery?

19 A. Yes.

20 Q. And in Pennsylvania did you work different parts
21 of the state?

22 A. I don't remember. I don't believe so, generally.
23 Although a lot of times if I'm traveling to a
24 destination or trying to figure out my destination,
25 I'll be like a hotel's on the way and so I just totally

1 don't remember situations like that, because I don't
2 remember any place that I don't stay for very long.

3 Q. Did you go between all these states in 2004 by
4 car?

5 A. I think so.

6 Q. How about in 2006? Did you go to different
7 locations in Missouri, Montana, Oregon, Alaska,
8 Illinois?

9 A. Yeah.

10 Q. And did you stay in different locations in the
11 different states?

12 A. I don't really recall.

13 Q. Did you drive amongst those states to get from
14 where you were going to where you were going?

15 A. Yes, I always drove everywhere.

16 Q. Okay. So 2008, what states did you collect in?

17 A. Illinois and Indiana, this time for Ron Paul.

18 Q. In both states for Ron Paul?

19 A. Yes. And I may have gathered in a few other
20 states for ---. I don't think I gathered for Paul in
21 any other states, but I gathered for Libertarians in
22 West Virginia and Alabama.

23 Q. Any other states that you worked in 2008?

24 A. I don't think so.

25 Q. Can you give me the chronology of order of states,

1 which one first, second, third, fourth, out of those
2 four?

3 A. Illinois and Indiana were much earlier and they
4 were in the wintertime.

5 Q. Okay.

6 A. Actually, they were in 2007, but it was for the
7 2008 ballot access cycle, because the Republican
8 deadlines are obviously earlier because they have a
9 primary. They're a major party, ---

10 Q. Uh-huh (yes).

11 A. --- so their primaries are earlier.

12 Q. So Illinois and Indiana were earlier. Do you know
13 which one was first?

14 A. Illinois.

15 Q. So Illinois and then Indiana. How about West
16 Virginia and Alabama? Where did those fall?

17 A. Once again, summertime. Before the September
18 deadline in Alabama.

19 Q. Okay. Any other places you collected signatures
20 in 2008 other than those four?

21 A. If there was, I don't recall. I don't think so.

22 Q. Did you drive between all of these states to your
23 work?

24 A. Yes.

25 Q. When you were in each of these states did you go

1 to different locations to collect signatures?

2 A. Yes.

3 Q. When you were in these states, did you stay at
4 different hotels?

5 A. Not always.

6 Q. Okay. In Illinois, did you?

7 A. I don't think so.

8 Q. How about in Indiana?

9 A. Yes.

10 Q. How about in West Virginia?

11 A. I don't know if I changed hotels there. I was
12 only in Charleston, though.

13 Q. How about in Alabama?

14 A. I believe I did change hotels there.

15 Q. How about in 2009? Did you collect any
16 signatures?

17 A. I don't think so. Or, yeah, I did. I'm sorry. I
18 was in Massachusetts then.

19 Q. And what were you collecting for in Massachusetts?

20 A. For party ballot access for both major and minor.
21 They don't have an exclusive or exclusionary rule
22 there.

23 Q. How long were you in Massachusetts for,
24 collecting?

25 A. And also there's no exclusionary ---. I'm sorry.

1 There's no exclusionary rule in Alabama either.

2 Q. Okay.

3 A. And in several of the states that's the case. So
4 actually you said that you wanted to know who I was
5 gathering for earlier?

6 Q. Yes.

7 A. And I believe that I unfortunately neglected to
8 let you know that several of the states, and I can't
9 remember which is exclusionary and which are not at
10 this point, because I only cared whether the
11 Libertarians really accessed the ballot. The others
12 were just purely for the monetary compensation. But I
13 was gathering for Green Party, and I believe it would
14 have Nader, as an Independent as well.

15 Q. Okay.

16 A. And so that was the case in multiple states ---

17 Q. Okay.

18 A. --- as well. And like I said I just ---. I'm
19 sorry, I just totally don't remember which ones have an
20 exclusionary rule or not. I know certain ones
21 definitely don't, because I do remember certain hassles
22 associated with asking people to, you know, sign for
23 the Green Party and having to explain what the Green
24 Party was when I didn't really care about Green Party
25 ballot access necessarily.

1 Q. Okay. So in 2009 you talked about collecting
2 signatures in Massachusetts.

3 A. Uh-huh (yes).

4 Q. Any other ---?

5 A. And in 2008 I had also collected for, like I said,
6 Nader as an Independent as well.

7 Q. Okay.

8 A. And there were many people that wanted Nader on
9 the ballot in addition. Lots of the public will ask
10 questions about, you know, are you putting these
11 candidates on. And we'll say, well, yeah, I want all
12 the candidates on the ballot. And so they actually
13 wanted to sign for all of them rather than just one of
14 them, so ---.

15 Q. Any other places you collected in 2009, other than
16 Massachusetts?

17 A. Let me think. If there was, I don't recall.

18 Q. Okay. How about 2010?

19 A. No.

20 Q. 2011?

21 A. Yes.

22 Q. Where did you collect?

23 A. Just North Dakota, I think.

24 Q. And what was that? Was it for a candidate, an
25 initiative? What was it for?

1 A. That was three parties, Constitution Party, Green
2 Party and Libertarian Party. And also I believe I, in
3 2011, also did Wyoming and that was for Independent
4 candidates.

5 Q. When you were in --- backing up,
6 Massachusetts ---?

7 A. Oh, I'm sorry. In 2009 I also did Alabama.

8 Q. Okay. So when you were in Massachusetts, back in
9 2009 ---?

10 A. I'm sorry. Alabama was 2010, or it was for the
11 2010 election cycle. Sorry.

12 Q. That's fine.

13 A. I didn't mean to keep you guys taking notes.

14 Q. That's fine, that's fine. We just want your best
15 memory. That's fine. So in 2009, in Massachusetts,
16 did you collect in different locations in the
17 Commonwealth of Massachusetts?

18 A. Uh-huh (yes).

19 Q. You have to say yes or no.

20 A. Yes. Sorry.

21 Q. And did you stay in different hotels in the
22 Commonwealth of Massachusetts to collect those
23 signatures?

24 A. Yes.

25 Q. And did you drive in and out of Massachusetts?

1 You drove to Massachusetts, you work and then you drove
2 out?

3 A. No. I believe I actually flew.

4 Q. Okay. So 2010 in Alabama did you collect
5 signatures ---? Well, first of all, what was that for?
6 Was it an initiative, a party, a candidate?

7 A. It was a candidate.

8 Q. Which one?

9 A. Oh, geez. I can't remember the guy's last name.
10 He was a Constitution Party candidate.

11 Q. Okay. And did you collect signatures for him in
12 different locations in Alabama?

13 A. Only in the congressional district that is Mobile,
14 Alabama.

15 Q. This is a candidate for Congress?

16 A. Yes.

17 Q. So you were in his district in Mobile and did you
18 stay in different hotels in the Mobile area or just
19 one?

20 A. It was a couple different ones, I think.

21 Q. And did you drive to Alabama to do this work or
22 did you fly there?

23 A. I believe I was in a rental car at that time.

24 Q. Okay. 2011 in North Dakota. How long were you
25 there for?

1 A. I'm sorry. I also would have been in South Dakota
2 right before then.

3 Q. For the 2011 cycle?

4 A. Yeah.

5 Q. Okay. So let's take North Dakota first and then
6 we'll move to South Dakota. Where did you ---? How
7 long were you in North Dakota for?

8 A. I don't recall exactly.

9 Q. Did you collect signatures in ---?

10 A. It was at least a couple of months, though.

11 Q. Did you collect signatures in various parts of the
12 state in North Carolina?

13 A. Yes.

14 Q. And did you stay in hotels in various parts of
15 North Dakota while you were collecting these
16 signatures?

17 A. Yes.

18 Q. Did you from North Dakota to South Dakota or it
19 was the other way around?

20 A. Other way around.

21 Q. Okay. Did you go directly from South Dakota to
22 North Dakota?

23 A. Yes.

24 Q. How long were you in South Dakota for?

25 A. I believe it would have been just a few weeks.

1 Q. And were you collecting signatures in South Dakota
2 in different parts of that state?

3 A. Yeah.

4 Q. And were you staying in hotels in different parts
5 of that state?

6 A. Yes.

7 Q. Where did Wyoming fit in on this? Did it come
8 after North Dakota?

9 A. I actually don't remember, I'm sorry to say.

10 Q. That's fine. Do you know how long you were in
11 Wyoming?

12 A. A month or two.

13 Q. And you were collecting for an Independent
14 candidate?

15 A. Yes. And for party ballot access.

16 Q. What part?

17 A. Libertarian and Constitution.

18 Q. And who was the candidate?

19 A. In 2012, I ---.

20 Q. No, this is 2011.

21 A. This was for the 2012 cycle, though.

22 Q. Okay. I was talking about the 2011 election.

23 A. I believe all of these were for the 2012 cycle.
24 Because it starts early, so ---.

25 Q. Okay. So did you collect any signatures in the

1 2011 election cycle?

2 A. I don't think so.

3 Q. Okay.

4 A. I don't think any of them were for the 2011.

5 Q. So when you just told me about North Dakota, South
6 Dakota and now we're going into Wyoming, it was for the
7 2012 election cycle?

8 A. Uh-huh (yes). Yeah.

9 Q. All right. So who was the candidate in Wyoming
10 that you were collecting signatures for?

11 A. Actually, you know, I don't even ---. I don't
12 remember anyone except Don Wills. That was the
13 only ---. Like I said, I only tend to remember the
14 candidates that I, you know, really have a kind of a
15 personal stake in monitoring the outcome and seeing if
16 they did well.

17 Q. What did Mr. Wills ---? What was he running for?

18 A. Governor.

19 Q. Governor? Governor of Wyoming?

20 A. Yeah.

21 Q. What were you collecting for in South Dakota? Was
22 it a party? Was it a candidate?

23 A. Party ballot access, multiple parties once again.

24 Q. Libertarian, Constitution and Green?

25 A. Yeah. I believe so. And I'm sorry, in 2011 the

1 candidate, Don Wills, was actually a party of his own
2 creation. He was an independent candidate. And he was
3 with a party that he called the Country Party, which
4 was kind of an arbitrary name.

5 Q. Okay. And was that for the 2011 election or the
6 2012 election?

7 A. That was I believe 2011. Yeah. It must have been
8 2011 or 2013 that I was there for Wills, so ---.

9 Q. So for the 2012 election, you were in North Dakota
10 and South Dakota ---

11 A. Uh-huh (yes).

12 Q. --- and Wyoming for the Libertarian and
13 Constitution; is that correct?

14 A. Yeah.

15 Q. And then in 2011 and 2013 you were in Wyoming for
16 Mr. Wills?

17 A. Yeah.

18 Q. Where else did you collect ---?

19 A. Actually, I don't think it was 2013 for Wills, I
20 think that was 2011, because I was back in Wyoming for
21 Wills in 2014 at the same time that I testified.

22 Q. Okay. Any place else that you went ---? So the
23 2011 election you were in Wyoming collecting signatures
24 for Mr. Wills?

25 A. Uh-huh (yes).

1 Q. How long were you there for?

2 A. A few months.

3 Q. And did you collect signatures in various parts of
4 the State of Wyoming?

5 A. Yes.

6 Q. And did you stay in hotels in various parts of the
7 State of Wyoming?

8 A. Yes.

9 Q. Did you drive to and from the State of Wyoming?

10 A. Yes.

11 Q. In 2012 we talked about North Dakota, South Dakota
12 and Wyoming as it relates to the Libertarian
13 Constitution. Now we're at 2013. Where did you
14 collect in 2013?

15 A. I don't think that I actually did any significant
16 signature gathering in 2013.

17 Q. How about 2014, where did you collect?

18 A. 2014? Wyoming and Illinois.

19 Q. How long were you in Wyoming for?

20 A. A little over a month, I think.

21 Q. And was that to get signatures for Mr. Wills
22 again?

23 A. Yes. And Kurt Gottshall for Congress.

24 Q. And did you collect those signatures in Wyoming in
25 various locations around the state?

1 A. Yes, but mostly Cheyenne.

2 Q. And did you stay in various locations around the
3 state to collect those signatures?

4 A. Yes, but mostly Cheyenne.

5 Q. Okay. Did you drive to and from Wyoming to do
6 that work?

7 A. I think so, yes.

8 Q. Do you know what time of the year that was?

9 A. Summertime.

10 Q. Summer? So the summer of 2014?

11 A. Yeah.

12 Q. Did you collect any other signatures in Wyoming
13 other than for Mr. Wills and Mr. Gottshall?

14 A. Libertarians.

15 Q. Candidates or the party?

16 A. The party ballot access in Illinois, as ---.

17 Q. I'm talking about Wyoming.

18 A. Oh, I believe probably the Green Party.

19 Q. In Wyoming?

20 A. Yeah. And they finish at different times as well,
21 so I'm not entirely certain about that.

22 Q. Okay. Did you go to Wyoming and then Illinois or
23 Illinois and then Wyoming?

24 A. Illinois and then Wyoming.

25 Q. And how long were you in Illinois for?

1 A. A couple months.

2 Q. And who did you collect for in Illinois or what
3 referenda did you ---?

4 A. Party ballot access for the Libertarians.

5 Q. And did you collect those signatures in different
6 parts of the state in Illinois?

7 A. Yes.

8 Q. Did you stay in hotels in different parts of the
9 state?

10 A. No, I don't believe so.

11 Q. You just stayed at your mother's house ---

12 A. Yeah.

13 Q. --- to do that work?

14 A. I think so.

15 Q. Okay.

16 A. Like I said, I mean, if there are small exceptions
17 anywhere in this that I don't remember, you know, like
18 I want to make sure I'm telling you the whole truth to
19 the best of my memory here, but, you know, it could be
20 that I stayed, you know, like for a few days in some
21 other place.

22 Q. Okay.

23 A. I didn't work long in any of those other
24 locations, though.

25 Q. Any of what other locations?

1 A. If there were any other locations it was in such a
2 short amount of time that I do not recall them at this
3 point.

4 Q. Okay. How about 2015 election? Did you collect
5 any signatures?

6 A. I don't think so, no.

7 Q. How about this election cycle, 2016?

8 A. Yes.

9 Q. Where have you collected?

10 A. Oh, you know, in 2015, before the deadline ---.
11 I'm sorry, I was, but it was for the 2016 cycle.

12 Q. So anything for the 2015 election cycle?

13 A. No.

14 Q. So the 2016 election cycle, where did you collect
15 signatures?

16 A. In 2015 I started in Indiana.

17 Q. For whom?

18 A. It was for all the Republicans that were in the
19 race at that time. Which to the best of my knowledge I
20 know there were like 15. But not all of them were
21 gathering signatures there, so it was a subset of
22 those.

23 Q. Okay.

24 A. And the only one that I cared about was Rand Paul.
25 I gathered signatures for a bunch of the other ones.

1 And incidentally a bunch of people wanted to sign for
2 the ones that I did not care about. And then when I
3 said, could you also sign for Rand Paul just to make
4 sure that everybody accesses the ballot, then they
5 would all --- you know, 99.9 percent of the people said
6 yes, that they would do that.

7 Q. How long were you in Indiana for?

8 A. More than two months.

9 Q. Did you collect signatures in various locations in
10 Indiana?

11 A. Yes.

12 Q. And did you stay in hotels in various locations in
13 Indiana?

14 A. Yes.

15 Q. Where else did you collect?

16 A. There's a district-specific requirement, so I was
17 all over the place ---

18 Q. Okay.

19 A. --- in the different congressional districts.

20 Q. Where else did you collect in for this 2016
21 election cycle?

22 A. Let me see here. North Dakota.

23 Q. Who did you collect for there?

24 A. You're talking besides Pennsylvania?

25 Q. Yeah. We'll get to Pennsylvania. I want a whole

1 list and then we'll drill down. So you just said North
2 Dakota. Who did you collect for there?

3 A. Libertarians, Rocky De La Fuente and Green Party.
4 Or, I'm sorry, Constitution Party, Rocky De La Fuente
5 and Green Party. Actually the Libertarians were
6 already done. They had major party status from our
7 prior work, ---

8 Q. Okay.

9 A. --- so they did not need to be completed.

10 Q. Were you ---?

11 A. And ---.

12 Q. I'm sorry. Go ahead.

13 A. And Illinois.

14 Q. Were you collecting for Rocky De La Fuente as a
15 Democrat or as an Independent or in what role?

16 A. In North Dakota?

17 Q. Yes, North Dakota.

18 A. As an Independent.

19 Q. As an Independent?

20 A. Because that was post primary cycle.

21 Q. Okay. How long were you in North Dakota for?

22 A. About three weeks. About a month. It was almost
23 a month. Almost one month.

24 Q. Okay. Did you go from Indiana to North Dakota or
25 is there some place in between?

1 A. Let me think here. It's recent, so I actually
2 should remember. I think I ---. There was significant
3 time ---. Pennsylvania was before then, ---

4 Q. Okay.

5 A. --- of course. And so it was Illinois and then
6 Pennsylvania. And then I went ---. I flew to a couple
7 of different places this time for very short petition
8 time periods. So it was Connecticut, New Mexico and
9 Atlanta, Georgia, so ---.

10 Q. So if I've taken notes correctly, in this 2016
11 election cycle you collected signatures in Illinois,
12 Pennsylvania, Connecticut, New Mexico, Georgia,
13 Indiana, North Dakota; is that correct?

14 A. Yeah.

15 Q. Any others?

16 A. Not that I can recall right now, so ---.

17 Q. How long were you in Illinois for?

18 A. It was three months. I wasn't gathering
19 signatures continuously.

20 Q. Okay. How long were you gathering signatures in
21 Illinois? Strike that, that's a bad question.

22 Throughout that three-month period you were
23 collecting signatures, but it wasn't day in and day out
24 for three months, am I understanding you correctly?

25 A. Correct.

1 Q. Okay. What individuals or party were you
2 collecting for in Illinois?

3 A. Only the Libertarian party, ballot access. And
4 I'm sorry, there were a couple of initiatives that I
5 gathered for in 2014. And ---

6 Q. Okay.

7 A. --- you didn't ask me about them, but you did ask
8 me to say --- you wanted to know where I gathered
9 signatures ---

10 Q. Yeah.

11 A. --- and what for, so ---.

12 Q. So where were those in 2014?

13 A. And it was also ---. I think 2012 there was one
14 initiative in Illinois. It was term limits, and it was
15 a redistricting amendment in Illinois.

16 Q. That's for 2012?

17 A. In 2012 there was ---. I think that there was an
18 initiative that failed to make the ballot, so I deleted
19 it from my memory. I'm sorry. I've been trying to
20 learn programming over the last couple of months and
21 trying to delete all the programming knowledge and ---.
22 I mean, I know it sounds absurd for me to say that my
23 brain is full, but I mean I actually am trying to just
24 kind of put the petitioning behind me and be done with
25 it.

1 Q. Are you looking to get out of that work?

2 A. Yes.

3 Q. Okay. Why?

4 A. Absurd restrictions on my right to free speech,
5 country definitely going down the tubes because of
6 interference with free speech, police harassment
7 continuously, things of that nature.

8 Q. 2014, you just talked briefly about some
9 initiative that you did in Illinois.

10 A. Map amendments and it's a redistricting initiative
11 and the term limits.

12 Q. Okay.

13 A. And all these things I kind of start and stop at
14 various different times. Some of them I work on for
15 just a very short period of time and others I work
16 longer. Some I hire petitioners, some I don't.

17 Q. So around the 2016 election cycle, you told me
18 what you did in Indiana, in Illinois, in North Dakota.
19 We'll come back to Pennsylvania. What did you do in
20 Connecticut? Who did you collect for in Connecticut?

21 A. It was Rocky De La Fuente as a Democrat for the
22 Democratic Primary.

23 Q. How long were you in Connecticut then?

24 A. And there were others as well, because there's no
25 exclusive requirement there either.

1 Q. Who else?

2 A. That's a good question. Who was it?

3 Libertarians, I believe. I might be wrong about that.

4 Q. How long were you in Connecticut for,
5 collectively?

6 A. Not long, a couple weeks.

7 Q. Did you collect in Connecticut in different
8 locations?

9 A. Yes.

10 Q. And did you stay in different hotels in different
11 locations?

12 A. Yes.

13 Q. New Mexico, what were you collecting there for?

14 A. Rocky De La Fuente and the short-lived Better for
15 America Party. That was just David French.

16 Q. Were you ---?

17 A. Presumably David French, although it was never, I
18 believe, officially declared.

19 Q. For the Rocky De La Fuente in New Mexico, was that
20 him as a Democrat or as an Independent?

21 A. An Independent.

22 Q. How long were you in New Mexico for, collectively?

23 A. It was a very short period of time. It could have
24 been five or six days, but I was only working for four
25 days.

1 Q. Did you work and collect signatures in different
2 locations in New Mexico?

3 A. Yes.

4 Q. Did you stay in different locations, different
5 hotels?

6 A. No.

7 Q. How about in Georgia, what were you collecting for
8 there?

9 A. Rocky De La Fuente and Green Party.

10 Q. Were you collecting for Rocky De La Fuente as a
11 Democrat or as an Independent?

12 A. Independent.

13 Q. And how long were you in Georgia for collecting?

14 A. Just four days.

15 Q. And you'd mentioned Atlanta, I think, early on.
16 Were you only at Atlanta or did you go to different
17 locations in Georgia?

18 A. I was in many different locations in Atlanta.

19 Q. Okay. Did you stay only in Atlanta or did you
20 stay in different hotels as well?

21 A. Stayed only in Atlanta.

22 Q. So Pennsylvania for 2016, who did you collect for
23 and what did you collect for?

24 A. Rocky De La Fuente and Ted Cruz. Ted Cruz's
25 delegates only.

1 Q. Okay.

2 A. And Rocky De La Fuente's delegates, of course.

3 Q. Did you campaign (sic) for Rocky De La Fuente as a
4 Democrat or as an Independent?

5 A. I'd say kind of an improperly-phrased question,
6 because this is not campaign work.

7 ATTORNEY ROSSI:

8 You said campaign.

9 ATTORNEY JOEL:

10 Oh, I'm sorry.

11 ATTORNEY ROSSI:

12 Yeah. That was a slip of the tongue.

13 BY ATTORNEY JOEL:

14 Q. Did you collect signatures for Rocky De La Fuente
15 as a Democrat or as an Independent?

16 A. As a Democrat.

17 Q. Okay. And how long were you in Pennsylvania
18 collecting signatures for these two individuals?

19 A. Oh, I don't know. It was within a 21-day window,
20 which is an absurdly restrictive short time window in
21 comparison to every other state in the nation. So it
22 had to be within that 21-day time window. It was very
23 early in the season.

24 Q. Okay.

25 A. What was it like still wintery weather out,

1 so ---.

2 Q. Okay. Did you collect signatures in various
3 locations across Pennsylvania?

4 A. Yes.

5 Q. And did you stay in hotels in different places
6 across Pennsylvania?

7 A. Yes.

8 Q. Did you drive to and from Pennsylvania ---?

9 A. And not hotels as well.

10 Q. Okay. So where else did you stay other than
11 hotels?

12 A. The boss's father-in-law's house in Pittsburgh, a
13 property that he owns there.

14 Q. Who's the boss?

15 A. Trent Pool, ---

16 Q. Oh, okay.

17 A. --- Benezet Consulting.

18 Q. So Mr. Pool's father lives in Pittsburgh?

19 A. His father-in-law.

20 Q. Father-in-law lives in Pittsburgh?

21 A. I don't know that his father-in-law lives in
22 Pittsburgh. I said that his father-in-law owned the
23 property.

24 Q. Okay. These other states that you've collected in
25 over your time when you stayed there, has it always

1 been in hotels or have you crashed at friends,
2 colleagues, boss's people, anything like that?

3 A. If I had to say, I'd say 80 percent of it is
4 hotels. And early on would be the 20 percent that was
5 generally party members, when I was more exclusively
6 working for the Libertarians.

7 Q. Okay.

8 A. I, like many other people, had kind of concluded
9 that almost all parties are generally the same. They
10 generally tend to just be an excess to the ballot,
11 avenue to the ballot or a possible lesser of multiple
12 evils, so ---. And many people sign all petitions
13 without general regard, just because they want everyone
14 to have access to the ballot. The most common
15 sentiment that I run into is that people don't want ---
16 they're surprised that there's even a requirement for
17 signature gathering. They have the rather naïve high
18 school civics view of reality that where they think
19 that candidates, if they want to run to run in a free
20 country they just go and file paperwork and then
21 they're on the ballot with no signature requirements.

22 Q. So what is your ---? I want to talk about
23 Benezet. What is your relationship to Benezet? Are
24 you an employee? Are you a subcontractor, an owner?
25 What's your relationship to Benezet?

1 A. Contractor.

2 OFF RECORD DISCUSSION

3 A. Contractor.

4 BY ATTORNEY JOEL:

5 Q. So you have no ownership interest in Benezet?

6 A. Correct.

7 Q. And you're not an employee of Benezet?

8 A. Correct.

9 Q. How long have you been a contractor for Benezet?

10 A. On and off only for the work that I had done just
11 this year. And, you know, there was a brief thing now
12 that you mention it. I don't know if this is Benezet
13 or not. I did forget to mention, because it was a very
14 short job, that I went to Texas on two occasions for
15 Trent Pool's father to place him on the ballot.

16 Q. Okay.

17 A. And I was paid ---. Well, you haven't asked me
18 about pay, so ---.

19 Q. We'll get there.

20 A. Okay.

21 Q. What was Mr. Pool --- Trent Pool's father looking
22 to become, what office?

23 A. Two different offices.

24 Q. What were they?

25 A. It was Texas Supreme Court Judge at-large

1 position.

2 Q. Okay. What else?

3 A. And it was Texas Railroad Commissioner.

4 Q. And when was it that you went to Texas to try to
5 get signatures for Mr. Pool for either of those
6 positions?

7 A. It was 2011 and 2013.

8 Q. Okay. So getting back, how ---? Taking that
9 aside, when did you start working for --- providing
10 contract work for Benezet?

11 A. I'm not sure if it was Benezet when I was working
12 for his father. I'm not sure. I honestly don't know
13 if it was for Benezet or just for the official campaign
14 name. I don't know what the paperwork that they
15 filed ---

16 Q. Okay.

17 A. --- said about that.

18 Q. When did you first begin working for Benezet?

19 A. Like I said, it's contingent on me knowing the
20 answer to your prior question, so I'm uncertain.

21 Q. When did you first meet Mr. Pool, Trent Pool?

22 A. 2005.

23 Q. 2005?

24 A. Yes.

25 Q. Did you do any work that you associated as being

1 provided by Mr. Pool from 2005 to the present?

2 A. Yes.

3 Q. Whether that was Benezet or whether that was Mr.
4 Pool calling you and saying, go to this place and
5 collect.

6 A. Trent's father.

7 Q. Okay.

8 A. It would have started in 2011. I did not work for
9 Trent before 2011.

10 Q. So 2011 you started working for Trent, maybe
11 Benezet if it was incorporated at that point. But
12 that's when you first started working for Pool, slash,
13 Benezet, is 2011?

14 A. Correct.

15 Q. And how many campaigns, how many signature
16 collection drives have you done for Pool, slash,
17 Benezet from 2011 to the present?

18 A. How many? I'd have to add up the previous ---.

19 Q. Is it all of them or have you worked for other
20 contractors?

21 A. Oh I've worked for other entities.

22 Q. Why don't you tell me all the entities you've
23 worked for in the signature gathering field?

24 A. Since when? I mean, I thought that's what we just
25 did for the whole time period.

1 Q. No. You told me where you were collecting
2 signatures.

3 A. Correct.

4 Q. Was that on your own as a freelance? Was that
5 working for a company like Benezet? Was that working
6 for a campaign directly? Who paid you? Who employed
7 you?

8 A. Always the people that I was putting on the ballot
9 paid me.

10 Q. Okay.

11 A. In all those previous situations you can assume
12 that that's the case.

13 Q. Okay.

14 A. For everything that I've previously mentioned, all
15 the people that I've worked for, you can assume they're
16 the ones that paid if I was gathering signatures for
17 them.

18 Q. Okay. So, for example, in 2016, gathering
19 signatures for Rocky as a Democrat in Pennsylvania, the
20 Rocky De La Fuente campaign paid you?

21 A. Oh, I'm sorry. That's correct. They paid Benezet
22 and Benezet paid me.

23 Q. That's what I want to know.

24 A. Yes.

25 Q. That's what I want to know. So how many ---?

1 A. But then I worked for Rocky later on my own and he
2 paid me directly.

3 Q. Okay. All right. How many signature-gathering
4 drives have you done where Benezet was the person
5 hiring you as a contractor?

6 A. Part of Indiana.

7 Q. This past cycle, 2016?

8 A. It was in 2015, I believe, although there then
9 goes into 2016 as well, but yes.

10 Q. I'm talking about the 2016 election.

11 A. Cycle. Yes. So it might have been part of 2015,
12 the work I did in 2015 and Indiana that I previously
13 mentioned ---

14 Q. Okay.

15 A. --- would have been for Benezet.

16 Q. What other ones?

17 A. Pennsylvania.

18 Q. This time around 2016?

19 A. Correct.

20 Q. What else?

21 A. Atlanta, New Mexico and Connecticut was Benezet.
22 But it could have also been that the people who
23 officially paid me --- Benezet had a subcontracting
24 deal with Alex Arsenault ---

25 Q. Okay.

1 A. --- in Connecticut. And I don't know the name of
2 his company, but he paid me, I believe, for a portion
3 of the work because they were splitting the payment for
4 expenses.

5 Q. And that was the Connecticut this go-around for
6 the 2016 election cycle?

7 A. That's correct.

8 Q. Okay. So what other ---? So you've worked for
9 Benezet. You've worked possibly for Alex Arsenault and
10 his company. What other companies or individuals have
11 you performed --- have you done this work for? And
12 leaving aside the campaigns getting you directly. I'll
13 get to them. But let's talk about the businesses first
14 and then we'll talk about the campaigns that hired you.

15 A. Only myself as an independent contractor, ---

16 Q. Okay.

17 A. --- that is it. And then all the others were
18 directly to the campaign.

19 Q. Okay.

20 A. And/or candidates, if you want to split hairs on
21 terminology.

22 Q. Have you ever worked with a person by the name of
23 Andy Jacobs?

24 A. Yes.

25 Q. When and where?

1 A. Let me see. Probably I'd say most of the petition
2 drives that I've worked on he's also worked on as an
3 independent contractor.

4 Q. Okay.

5 A. And naming them would probably require me to
6 mention almost everything, at least three-fourths of
7 everything I've worked on in the past.

8 Q. Okay. How is it that you're paid? Are you paid
9 hourly, salary, by the signature?

10 A. Per signature generally, seeking ---. Although
11 that changes. In some states per-signature pay is
12 forbidden.

13 Q. Okay.

14 A. And that is changed on and off as the courts ---
15 as a requirement has been defeated in the courts in
16 certain states and allowed to stand in other cases.
17 I'm sorry. There's someone else I forgot.

18 Q. Sure.

19 A. I know I'm remembering ---.

20 Q. No, that's fine. Go ahead.

21 A. Going back through the minutiae of my ---.

22 Q. That's okay.

23 A. I forgot in 2010 that I worked in Oregon for John
24 Michael and his company. I don't recall the name of
25 his company.

1 Q. And do you know what you were collecting for?

2 A. Jeez, some initiative in Oregon.

3 Q. Okay. So in this 2016 campaign, when you worked
4 in Pennsylvania, did you have somebody --- a
5 Pennsylvania resident go with you and witness your
6 signature collections?

7 A. Yes.

8 Q. And whether it was for the Ted Cruz delegates or
9 for Rocky De La Fuente, you did obtain signatures for
10 both; correct?

11 A. That's correct, at different times, due to the
12 nature of the witness requirement.

13 Q. So let me break that up, because that was not a
14 very good question. You did get signatures for Rocky
15 De La Fuente?

16 A. Correct, as a Democrat for the primary.

17 Q. As a Democrat for the primary you did obtain
18 signatures. And you obtained signatures even though
19 you had a witness with you; correct?

20 A. Correct.

21 Q. And those signatures were notarized, I'm assuming;
22 correct?

23 A. Correct.

24 Q. And those signatures, at least to the best of your
25 knowledge, were not people double dipping and signing

1 multiple petitions; correct?

2 A. Each one had to be qualified by me prior to
3 signing, that's correct.

4 Q. And by part of that you had to make sure that they
5 hadn't signed somebody else's already?

6 A. Yes.

7 Q. Do you know how many signatures you got for Rocky?

8 A. I don't. It wasn't a large ---. It wasn't an
9 exceptionally large number. Maybe 500 or 600, if I
10 recall, but I don't recall exactly.

11 Q. Okay.

12 A. I do recall where I worked. I tend to remember
13 what I consider to be more the salient facts of the
14 work, rather than, you know, specific start and stop
15 dates and things of that nature.

16 Q. Okay.

17 A. The nature of the work, as it were.

18 Q. All right. But not the number that you got, the
19 number of signatures?

20 A. No, not exactly. I don't run around with that
21 committed to memory. Andy Jacobs does incidentally.
22 He's excellent with minutiae.

23 Q. We'll ask him on Friday then.

24 A. Sounds good.

25 Q. What about Mr. Cruz? Did you get signatures from

1 Mr. Cruz?

2 A. Yes, in two different districts.

3 Q. Do you remember how many you got?

4 A. A small number in District 14. I largely was
5 prevented from finishing my work in District 14 due to
6 the witness requirement there. So that was kind of a
7 hassle.

8 Q. Okay. Did you get signatures for Mr. Cruz in
9 District 14?

10 A. Yes.

11 Q. Okay. Did you have a witness with you?

12 A. Yes.

13 Q. Were they notarized?

14 A. Yes.

15 Q. And did you qualify people to make sure they
16 hadn't signed more than --- another petition already?

17 A. Yes.

18 Q. And what other district did you work in for Mr.
19 Cruz?

20 A. State College. I believe that's District 5
21 although don't quote me on that, because I'm not
22 totally certain.

23 Q. Okay. Did you get signatures from Mr. Cruz in the
24 State College area, in State College?

25 A. That's correct.

1 Q. And you did that with a witness?

2 A. That's correct.

3 Q. And their signatures were properly notarized?

4 A. That's correct.

5 Q. And you made sure before people signed that they
6 hadn't signed somebody else's petition?

7 A. That's correct.

8 Q. Do you know how many you got there in State
9 College?

10 A. A few hundred, enough to qualify each one in
11 conjunction with the few hundred that Andy Jacobs got
12 as well. And also that ---. I believe that one of the
13 delegates went out and gathered some as a volunteer,
14 so ---.

15 Q. And Ted Cruz was to get his delegates on the
16 ballot?

17 A. That's correct.

18 Q. Okay.

19 A. And also Rocky's delegates for Rocky.

20 Q. Did Rocky have any delegates?

21 A. Yes.

22 Q. How many?

23 A. I believe three.

24 Q. Three?

25 A. I think that's standard. I'm not sure if I'm

1 remembering that correctly. I think I am, though, as
2 far as the delegates for Rocky.

3 Q. Okay. We can check the official ---

4 A. Yeah.

5 Q. --- and see if he had delegates or not.

6 A. Uh-huh (yes).

7 Q. I'm just trying to get your recollection of it.

8 A. Now that I think about it, Rocky, I don't know if
9 he had delegates or not. I can't remember. I don't
10 have that in my mind.

11 Q. Okay. From 2011 on how much of your annual
12 compensation has been through signature gathering? All
13 of it, most of it, some of it?

14 A. Most of it.

15 Q. Most of it? How about since you started in this
16 business?

17 A. Most of it, most years.

18 Q. Most?

19 A. Except for 2007 and ---. Yeah, except for 2007.

20 Q. For all of the work you've done as a signature
21 collector, have you always been paid per signature?
22 You have to say yes or no for her.

23 A. I'm thinking.

24 Q. Oh, okay. I thought I saw you nodding. I'm
25 sorry.

1 A. No.

2 Q. Okay.

3 A. Because that would require me to break the law in
4 certain states, which I did not do.

5 Q. Okay.

6 A. In the no paper signature states I gathered on an
7 hourly basis.

8 Q. Okay. So if I understand you correctly, there are
9 some states where you can't be paid per signature
10 pursuant to state law. In those states ---

11 A. Yes.

12 Q. --- you get an hourly rate?

13 A. Yes. And in those states that hourly rate is
14 commensurate with what I would make on a per-signature
15 basis. It's just a --- essentially an extra paperwork
16 requirement designed by the state to try to eliminate
17 choices from the ballot. It requires the initiative
18 proponents to file significantly more paperwork,
19 so ---.

20 Q. Okay.

21 A. I think the only state that that was the case in,
22 to my recollection, was Oregon.

23 Q. Okay.

24 A. It could have also have been Montana. It was
25 several years ago.

1 Q. In every other state where you were allowed to be
2 paid per signature that's how you've been paid?

3 A. Yes or by registration.

4 Q. Okay. When you're on the road going to all these
5 states, do you go back to your home in Alaska in
6 between or do you just go from state to state to state
7 usually?

8 A. State to state.

9 Q. Okay. Did you collect any signatures ---? Are
10 you familiar with an initiative out in Pittsburgh by
11 OpenPittsburgh to get a ballot measure on ---?

12 A. I'm aware of it.

13 Q. Did you collect any signatures for that?

14 A. I did not.

15 Q. Are you aware that you're a named plaintiff in
16 that case?

17 A. I believe that that was a paperwork error.

18 Q. Oh. Did you have any involvement with the
19 managing or recruiting or anything like that, any of
20 the folks who collected the signatures on behalf of
21 OpenPittsburgh?

22 A. No.

23 Q. Okay. And you didn't collect any signatures
24 yourself? You didn't come into Pittsburgh and do that?

25 A. Correct, I did not.

1 Q. Okay. Why do you think it was a paperwork error?

2 A. I assume that.

3 Q. Why do you assume that?

4 A. Because I didn't work there.

5 Q. Huh?

6 A. Because I didn't work there.

7 ATTORNEY ROSSI:

8 That's not what he's asking you. He's
9 asking you about you being a plaintiff in that case,
10 not circulating petitions there.

11 A. Right. I assume it's a paperwork error, because I
12 didn't go to Pennsylvania, or I didn't go to Pittsburgh
13 for that initiative when it was going on. So,
14 therefore, I assume that it was a paperwork error, ---

15 BY ATTORNEY JOEL:

16 Q. Okay.

17 A. --- if I was named ---.

18 Q. Let me get at it ---. No, no. Let me get at it
19 this way. Are you aware that you are a plaintiff
20 challenging on constitutional grounds various
21 provisions of Pittsburgh's home rule charter as it
22 relates to placing a referendum on the ballot?

23 A. I believe that he had mentioned that I was listed
24 incorrectly as having worked on the OpenPittsburgh
25 initiative and that is the only thing that he had said

1 to me.

2 ATTORNEY ROSSI:

3 Can you clarify the question, please, for
4 him?

5 ATTORNEY RADZIEWICZ:

6 Maybe explain what the plaintiff is?

7 ATTORNEY JOEL:

8 We'll take a break.

9 ATTORNEY ROSSI:

10 Yeah.

11 ATTORNEY JOEL:

12 Let's go get the Complaint.

13 ATTORNEY RADZIEWICZ:

14 Okay.

15 SHORT BREAK TAKEN

16 BY ATTORNEY JOEL:

17 Q. With your work with Benezet, do you have a
18 contract with them or is it just Trent picks up the
19 phone or e-mails you and says, go here or go there?

20 A. That would technically be an oral contract, would
21 it not?

22 Q. Maybe, maybe not. Do you have a written contract
23 with Benezet to perform work?

24 A. No.

25 Q. Okay. Have you ever had a written contract with

1 Benezet to perform work?

2 A. Not that I can recall.

3 Q. Okay.

4 A. He may have shown me one once briefly and I just
5 forgot about it. So I mean if he produces that then I
6 wouldn't be surprised, but ---.

7 Q. For this past work that you did in Pennsylvania,
8 how much did you pay per signature?

9 A. It's difficult to calculate exactly. I believe it
10 was \$3 and then it was a \$1.50 override if I could
11 induce the witness to gather their own signatures on
12 his own.

13 Q. What does that mean?

14 A. If the witness was willing to gather any
15 signatures, then I was to be paid an additional amount
16 for any signatures that the witness gathered.

17 Q. Oh, okay.

18 A. So I would have to train him and get him to
19 produce and explain to him how to stop people and how
20 to not interfere with my signature gathering. And so
21 that's ---. It was just kind of prorated out to help
22 defer the cost of having a witness with me.

23 Q. Okay. So you mentioned training. Did you get any
24 training to be able to be a professional signature
25 gatherer?

1 A. In 2002, yes.

2 Q. What did you get?

3 A. I was taken to a location in Lansing, Michigan for
4 one day of petitioning on a college campus and taught
5 how to get people to stop and sign the petition, how to
6 get the maximum number of people to stop and sign a
7 petition, how to be very polite, exceptionally polite,
8 smile, make eye contact, that sort of thing.

9 Q. Okay. Who provided the training?

10 A. Scott Coolhouse (phonetic).

11 Q. Is he a professional signature gatherer as well or
12 what's his business?

13 A. Yes.

14 Q. Okay.

15 A. He may call himself a campaign consultant
16 variously. I don't want to label what he's done with
17 himself since that time. I don't really know.

18 Q. When you turn the signatures at --- strike that.

19 Let me again ask it this way. When is it that you
20 get paid? Is it when the signatures are turned in? Is
21 it after some sort of an objection or challenge period
22 is run? When do you get paid?

23 A. It entirely depends on the campaign.

24 Q. Okay. How about this last go-around of
25 Pennsylvania?

1 A. I was paid within one month of completing. It was
2 after signatures have been turned in. And I don't know
3 whether the campaigns had accessed the ballot at that
4 point or not.

5 Q. Okay. So then within about a month of you turning
6 them in you were paid? Did I hear that correctly?

7 A. Yes. I had a payment dispute with Trent, though,
8 so ---.

9 Q. What was that over?

10 A. I believe that I was not completely paid for one
11 of the districts.

12 Q. Why do you think you were not completely paid?

13 A. He claimed that he did not owe me money, my
14 calculations were something different.

15 Q. Okay. Was that based on a per-signature ---?

16 A. For District 14, for Ted Cruz.

17 Q. Okay.

18 A. Where Ted Cruz failed to access the ballot.
19 Where his delegates failed to access the ballot.

20 Q. Did you end up getting paid for that?

21 A. I was either paid for that or I was paid for what
22 I did in Atlanta. And then I quit working for Trent
23 over that dispute.

24 Q. So you're no longer doing collection services for
25 Benezet or for Trent?

1 A. Correct.

2 Q. How much money was at stake?

3 A. \$934. And that district was the district where
4 for the first day there was no witness ready to go and
5 I had to --- you know, I want to be able to get into
6 that district and start working right away. I need to
7 make money on this job. So that was District 14 for
8 Ted Cruz.

9 Q. Okay.

10 A. Or Ted Cruz's delegates, as it were. Because
11 technically the candidate doesn't get put on the
12 ballot, the delegates do, so ---.

13 ATTORNEY JOEL:

14 Okay. Why don't you mark that?

15 OFF RECORD DISCUSSION

16 (Defendant's Exhibit 3 marked for
17 identification.)

18 ATTORNEY JOEL:

19 I'm showing you what's been marked as
20 Defendant's 3. There may be an amended complaint after
21 that, but ---.

22 ATTORNEY ROSSI:

23 There is.

24 ATTORNEY JOEL:

25 Okay. For purposes of this question, ---

1 ATTORNEY ROSSI:

2 Absolutely.

3 ATTORNEY JOEL:

4 --- I think this will be fine.

5 BY ATTORNEY JOEL:

6 Q. Turn. Keep turning. Keep turning. Keep turning.
7 I mean, you can read where you want, but I've just got
8 a question.

9 A. Uh-huh (yes).

10 Q. Keep going. Oh, that might be it. All right.
11 Paragraph 16. Nope. There you go. Paragraph 16, at
12 the bottom of that page, it mentions you being a
13 professional circulator for the plaintiff in that case.
14 Does that help you at all in terms of know anything
15 about that OpenPittsburgh case and your constitutional
16 challenges in it?

17 A. I'd have to read it fully.

18 Q. Sure.

19 WITNESS REVIEWS DOCUMENT

20 A. Yeah. Okay. I knew of the initiative ---

21 BY ATTORNEY JOEL:

22 Q. Okay.

23 A. --- to an extent. I didn't wind up working on it.

24 Q. I understand that, too. My question was, though,
25 do you know that you're a plaintiff in this lawsuit

1 challenging parts of the City of Pittsburgh's home rule
2 laws?

3 A. Yes. And to clarify, ---

4 Q. Sure.

5 A. --- I did not ---. I was unfamiliar with the
6 exact wording or terminology there. And so I thought
7 to be a plaintiff that I would have had to have worked
8 on that case there. I was just not thinking.

9 Q. Okay. That's fine.

10 A. I'm sorry.

11 Q. That's fine. That's why I showed you that. I was
12 hoping that would help. So you recognize that you're a
13 plaintiff in that litigation?

14 A. Yes.

15 Q. Are you aware that there was a preliminary
16 injunction hearing held on August 8th as it relates to
17 that case?

18 A. I did not know the exact date of any hearings.

19 Q. Okay. You were not in Pittsburgh to attend or
20 participate in any hearing; correct?

21 A. That's correct.

22 Q. On August 8th were you out collecting signatures
23 some place?

24 A. Yes.

25 Q. Where?

1 A. North Dakota.

2 Q. Sorry. When did you ---?

3 A. By the way. The way that I found out about the
4 OpenPittsburgh initiative was from Trent mentioning
5 that he might have work ---

6 Q. Okay.

7 A. --- in Pittsburgh. And this was at the time of
8 the New Mexico job.

9 Q. New Mexico or North Dakota?

10 A. There was the possibility of me going to
11 Pittsburgh to work on the OpenPittsburgh. It was
12 discussed between myself and Trent when I was in the
13 same hotel room that Trent was staying in, in New
14 Mexico.

15 Q. Oh, okay. Okay.

16 A. So a couple of months prior.

17 Q. Got it. And then on August 8th you were actually
18 in North Dakota collecting signatures on another
19 matter?

20 A. That's correct.

21 Q. And I'm not sure if you pinned it down or not.
22 When did you separate your business relationship with
23 Mr. Pool and Benezet?

24 A. Never formally.

25 Q. Okay.

1 A. But I would say I am not working for him in North
2 Dakota.

3 Q. Okay.

4 A. Had he called me up and said that he had work,
5 then I would have had to have heard what he was
6 offering.

7 Q. Okay. After the Pennsylvania work for Mr. Pool
8 and Benezet this past winter, have you done any more
9 work for Benezet or Trent Pool?

10 A. Can you ask the question again?

11 Q. Sure. Let me get at it this way. When you were
12 collecting signatures in Pennsylvania this past winter
13 for Cruz and Rocky, was that on behalf of Benezet?

14 A. Correct.

15 Q. Okay. That's what I thought. I just want to make
16 sure. Since that job have you done any other jobs on
17 behalf of Benezet?

18 A. Yes.

19 Q. Which ones?

20 A. Atlanta was the last one.

21 Q. Atlanta was the last one. And when was that?

22 A. It would have been right before I went to North
23 Dakota.

24 Q. Okay. So since Atlanta was the last job you did
25 for Benezet, you haven't done any jobs for Benezet from

1 that point?

2 A. Yes.

3 Q. But if I understand you correctly if Mr. Pool
4 calls you with an opportunity and it sounds good
5 enough, you'll go back to working for him?

6 A. Yeah.

7 Q. Okay.

8 A. Especially if he pays me the \$934.

9 Q. Do you know any of the people who collected
10 signatures in Pittsburgh for the OpenPittsburgh
11 initiative?

12 A. I don't know if I know them. I'd have to see a
13 list of the names.

14 Q. Okay. I didn't know if maybe Trent mentioned
15 anything to you?

16 A. He only mentioned who was going --- who he wanted
17 to go there when we were discussing it. But as I
18 understand it, I guess he didn't wind up sending
19 anyone.

20 Q. Okay.

21 A. Is that the case? I don't know.

22 Q. You don't know who he sent? Okay.

23 A. Well, if you give me a list of the names, then I
24 can tell you. I don't think he sent anyone though,
25 so ---. And I don't know if someone other than Trent

1 sent people I know into working OpenPittsburgh.

2 Q. Okay.

3 A. In the petitioning industry there are lots of
4 people that travel from state to state placing
5 initiatives and candidates on the ballot in exchange
6 for money.

7 Q. Do you work for any of those others or have ---?
8 Yeah. Do you currently work for any of those other
9 businesses?

10 A. I didn't say that they were businesses. I said
11 that they were people.

12 Q. Oh, okay.

13 A. They generally are independent contractors.

14 Q. Like you are?

15 A. And they generally travel from state to state
16 placing initiatives and referenda and candidates on the
17 ballot and parties on the ballot.

18 Q. Like you did?

19 A. Correct.

20 Q. Is there anything in your relationship with
21 Benezet, for example, that would preclude you from
22 working for another individual or another business to
23 collect signatures?

24 A. No. Although I mean that's ---. That could be an
25 expansively-interpreted question. So I don't know what

1 sense you mean that in. Because if Benezet has a sole
2 contract on a petitioning job in some state for some
3 client then, therefore, I wouldn't be able to work for
4 anybody else.

5 Q. Okay. Excepting that, let's assume going to
6 collect signatures for Donald Trump in Ohio, just to
7 say. If there's a whole bunch of people doing that,
8 there's nothing in your relationship with Benezet that
9 would prevent you from working for Benezet or for
10 working for yourself or for working for any other
11 number of these folks in this industry; correct?

12 A. That's correct.

13 Q. Okay.

14 A. Although, as I mentioned, a lot of times there are
15 companies that have a sole contractor or a sole
16 relationship. There is also the --- a monopoly aspect
17 in certain cases where people live in a certain state.
18 And there's a prohibition on out-of-state petition
19 circulation. So that would prevent me, if someone in
20 state had gotten that deal as a monopoly due to their
21 residency status.

22 Q. What other states have that sort of requirement
23 that you're aware of?

24 A. A lot of them do it for ---.

25 ATTORNEY ROSSI:

1 I'm going to object to that. That calls
2 for a legal conclusion and I don't think he's qualified
3 to make an opinion on it. I mean, I don't care ---. I
4 don't mind the answer, but I think that's a --- that
5 he's not in a position to answer that question
6 appropriately.

7 ATTORNEY JOEL:

8 He has given plenty of legal opinions
9 today. I think he's been doing this long enough he can
10 tell me what he knows, what his understanding is.

11 ATTORNEY ROSSI:

12 You can answer the question. I'm
13 recording my objection.

14 A. Okay. Out-of-state petitioner bans, when and
15 where they've been struck down, I indicated that I
16 previously didn't really know exactly where they've
17 been struck down. But as far as I ---. I mean,
18 obviously in Pennsylvania, but there's Illinois, but,
19 you know ---. Oh, no, not for an out-of-state
20 petitioner ban, only for multiple candidates.

21 I think that the last onerous one that struck down
22 or that maybe is still onerous is that there were a
23 bunch of western states right around the time that I
24 was hired in 2006 that had an out-of-state petitioner
25 ban and also had the pay-per-signature bans as well.

1 Q. How about notary requirements?

2 A. They do, but they're different in the other states
3 than in Pennsylvania.

4 Q. And I think you just mentioned having people
5 double dip and sign multiple petitions. That exists
6 elsewhere as well?

7 A. Is double dip the term ---?

8 ATTORNEY ROSSI:

9 I'm going to object to that as well. It
10 calls for a legal conclusion.

11 A. Is that terminology that you came up with?

12 ATTORNEY ROSSI:

13 Hang on. Let me make my objection.
14 Objection, legal conclusion. He's not capable ---.
15 He's not competent to answer that question precisely,
16 but you may answer the question.

17 A. Can you clarify what you mean by double dip?

18 BY ATTORNEY JOEL:

19 Q. Sure, signing more than one petition.

20 A. Okay. Did you invent that term?

21 Q. No. I've seen it before, but ---.

22 A. Okay.

23 Q. But are you aware of other states where there are
24 prohibitions on signing more than one petition?

25 A. Yes, there are.

1 Q. Okay.

2 A. For candidates, not for initiatives.

3 Q. Getting back to the OpenPittsburgh constitutional
4 challenge. Are you aware that the signatures that were
5 gathered in that case have been stricken by the
6 Allegheny Court of Common Pleas?

7 A. I was not certain whether there were signatures
8 stricken or whether it failed to access the ballot for
9 another reason.

10 Q. Okay.

11 A. I don't know of the reasons. If there are
12 multiple reasons or only one, I don't know.

13 Q. When you're collecting signatures in various
14 locations, if it's different for a location, let me
15 know. But I'm assuming ---. I would assume that you
16 give your best efforts on whatever campaign or
17 candidate or party you happen to be working on at that
18 point; is that fair?

19 A. I don't know if it's always fair to say that.
20 Just because when you say best efforts, I can go above
21 and beyond the call of duty in campaigning or handing
22 out literature and hand out literature for certain
23 candidates but not for others. So I would consider
24 that question to be somewhat confusing or
25 indeterminate. Because if I don't hand out candidate's

1 literature then sometimes they would consider that to
2 not be doing above and beyond or doing my best as it
3 were. I mean, best is a scale or value, so ---.

4 Q. Okay. Let's ask it this way then. When you are
5 in a state collecting signatures for a candidate, let's
6 take collecting for Cruz here in Pennsylvania this past
7 time, you get paid per signature you collect; correct?

8 A. Yes.

9 Q. You're trying to, therefore, collect as many
10 signatures as you can; correct?

11 A. Correct.

12 Q. If you are hauled out of Pennsylvania to go give a
13 deposition some place, you're not in Pennsylvania
14 collecting signatures; correct?

15 A. Correct.

16 Q. And if we change that to, let's suppose you're
17 collecting signatures for an initiative in North
18 Dakota, you get paid per signature?

19 A. Correct.

20 Q. And the more signatures you get the more money you
21 make?

22 A. Correct.

23 Q. And your goal, I'm assuming, is try to make as
24 much money as you can?

25 A. Correct.

1 Q. And if you're hauled out of North Dakota because
2 you have to go defend someplace else about signatures,
3 that's time away from North Dakota that you're not
4 collecting your signatures; correct?

5 A. Yes, unless it's after the deadline.

6 Q. Suppose it's not after the deadline.

7 A. Then that'd be correct.

8 ATTORNEY JOEL:

9 Okay. I think I'm just about done. A
10 couple minutes to talk to my colleague.

11 SHORT BREAK TAKEN

12 BY ATTORNEY JOEL:

13 Q. Mr. Witmer, have you ever in connection with your
14 signature collection efforts recruited others into this
15 business?

16 A. Yes.

17 Q. Okay. How many times have you done that?

18 A. Typically too many to count.

19 Q. Okay.

20 A. I don't know.

21 Q. Have you provided them with any training ---

22 A. Yes.

23 Q. --- on how to collect signatures, how to do it
24 politely, make eye contact, get people to sign, that
25 sort of stuff?

1 A. Yes.

2 ATTORNEY JOEL:

3 Okay. I think that's it. I may have
4 some after Mr. Rossi questions you, but I think I'm
5 good. Thank you.

6 EXAMINATION

7 BY ATTORNEY ROSSI:

8 Q. Let's get your ---. I mean, you were asked by
9 opposing counsel if you give your hundred percent
10 effort for every candidate, you know, or above and
11 beyond, just to paraphrase. I think you also testified
12 that your heart is with the Libertarian Party and their
13 candidates. Is that fair to say?

14 A. With all Libertarians.

15 Q. Okay.

16 A. Correct.

17 Q. Okay.

18 A. So in the case of a Ron Paul or the case of a Ted
19 Cruz, then I would tend to be more sympathetic to those
20 types of candidates in the Republication party.

21 Q. So you would gravitate towards those candidates
22 first and foremost that ---?

23 A. Yeah. Sort of Libertarian-leaning Democrat like
24 Rocky De La Fuente.

25 Q. Can you repeat that?

1 A. Yes. Sort of a Libertarian-leaning Democrat like
2 Rocky De La Fuente.

3 Q. Oh. I just had never heard him described as a
4 Libertarian-leaning Democrat. Okay. That's nice to
5 know. I'm sorry.

6 A. Yeah.

7 Q. That surprised me.

8 A. No worries. I saw that only because of his
9 stances on the 9th and 10th Amendments on his website.

10 Q. Okay. Fair enough. Fair enough. I see that
11 based on the testimony that you gave earlier in your
12 deposition you did a lot of work primarily for
13 Libertarian candidates from --- not exclusively, but
14 from 2002 through 2004. Was that because you were a
15 volunteer at that point or were you receiving
16 compensation?

17 A. I was receiving compensation, but I felt that I
18 had a personal stake in them accessing the ballot.

19 Q. Okay. So moving forward if you had a choice
20 between ---?

21 A. in 2009 I decided that I would circulate for any
22 candidate but not an anti-Libertarian initiative.

23 Q. So you have a threshold of acceptable candidates
24 for whom you would circulate for?

25 A. Correct.

1 Q. Would you ever circulate for Hillary Clinton?

2 A. No.

3 Q. Okay. For any amount of money?

4 A. It'd have to be pretty high.

5 Q. Fair enough. So the candidates you have supported
6 generally reflect in your estimation a consistent
7 political viewpoint of yours and getting them on the
8 ballot?

9 A. Yes. Until 2009. After 2009 the only reason I
10 would circulate for anyone else is because I thought
11 that they should obtain access to the ballot because
12 everyone has a right to access the ballot.

13 Q. Okay. Fair enough. So your viewpoints have
14 evolved a little bit over time ---

15 A. Yes.

16 Q. --- with respect to that ballot act. So your
17 main ---? Which is more important to you right now, a
18 libertarian, small L, getting ballot access or anyone
19 ballot access at this point?

20 A. Anyone who pays me. And that's also because the
21 quality of the Libertarian Party has degraded over the
22 last couple of years.

23 Q. Fair enough. Now we were talking earlier about
24 exclusionary rule. I just wanted to ---. And that was
25 your testimony, that some states don't have an

1 exclusionary rule.

2 A. Yes.

3 Q. What does that mean? What is an exclusionary
4 rule, in your vernacular?

5 A. There are different and Byzantine ballot access
6 regulations in every state. And an exclusionary rule
7 would be anything that makes it more difficult to
8 gather signatures.

9 Q. So you're not --- when ---?

10 A. So it could mean excessive notarization
11 requirements. It could be a small number of signatures
12 per page. It could be an out-of-state signature ban.
13 It could be a pay-per-signature prohibition, which
14 technically violates my right to contract, in my
15 opinion. And, you know, however we want to write the
16 contract is how we write a contract in states that
17 don't have that prohibition. And then there's a
18 restriction on how the contract can be written. So ---

19 Q. Okay.

20 A. --- I would see that as exclusionary --- and it
21 also complicates things more.

22 Q. So when you testified earlier and used that
23 terminology, you are --- you are speaking more broadly
24 than what Mr. Joel described as double dipping as
25 prohibition on voters from signing more than one paper

1 at a time?

2 A. Yeah. I've never heard the term double
3 dipping ---

4 Q. Well, that's fair.

5 A. --- with regard to the ---. Typically a
6 petitioner would say like piggybacking or stacking
7 petitions, like can that be done in a certain state, if
8 they're ascribing a job to another petitioner. And
9 that would be the nature of that.

10 Q. Okay. But as Mr. Joel used it, it was pretty
11 clear he was discussing signing more than one nominee
12 petition per paper?

13 A. Correct.

14 Q. Is that your understanding of his question? And
15 your answer to it?

16 A. Yeah, I think so.

17 Q. But exclusionary rules, your definition is simply
18 a much broader --- that double dipping would be one
19 component of exclusionary ---?

20 A. A prohibition on double dipping as he calls it?

21 Q. Yeah. Would be equivalent to other ballot acts,
22 restrictions?

23 A. Yes.

24 Q. So an exclusionary rule, in your vernacular, is
25 the universe about access restrictions?

1 A. Yes.

2 Q. And in your view some states are better at
3 allowing ballot access than others?

4 A. Yeah. Not just in my opinion. But I mean that's
5 like a pretty demonstrable fact. I mean, that's widely
6 known and understood in the petition industry. Every
7 single petitioner understands that, every single
8 proponent understands that. Everybody knows that
9 that's the case.

10 Q. Okay.

11 A. And, in fact, if you're talking with certain
12 proponents or certain petitioners and you're talking
13 with a proponent about, do they want to get on the
14 ballot in a certain state, they may say no or they may
15 say yes based on the difficulty and the number of
16 restrictions. You know, because every instruction
17 increases the cost of a petition to all involved.

18 Q. Okay. And restrictions limits your ability, in
19 your experience, to access and to --- strike that.

20 These various ballot access restrictions, in your
21 estimation and in your experience, limits your ability
22 to interact with voters?

23 A. Yes.

24 Q. Okay. Let me ---.

25 A. And frequently and in many different ways. All

1 right? Because they could totally limit my ability to
2 interact with a single voter by keeping me out of the
3 state. And that I could be kept out of the state
4 because the requirement is so onerous that I can't make
5 good money complying with it or it could prevent the
6 entire attempt about access from even happening. And
7 so someone would say, well, we think we're going to
8 have work for you, you know, at such and such a time
9 and then it turns out that we don't because of these
10 restrictions.

11 Q. In those states ---? Are there states that
12 allow ---? Just to get it on the record, have you
13 circulated petitions in states which allow more than
14 one petitioner paper to be signed at a time?

15 A. Yes, that's the case with most states ---

16 Q. Okay. And it's your testimony today ---?

17 A. --- that I work in.

18 Q It's your testimony today that many voters like to
19 sign more than one paper?

20 A. Yes.

21 Q. Okay. Have they ever explained to you why they
22 want to?

23 A. All the time, yes.

24 Q. And give us some of those explanations that you've
25 been privy to.

1 A. Okay. I thought they were already on the ballot.
2 No, sir, we have to go out and gather petition
3 signatures if you want candidates on the ballot. Or
4 no, ma'am, we have to go out and gather thousands and
5 thousands of petition signatures if you want a choice
6 on the ballot. And then a lot of them will express
7 incredulity that that's the case and they think I'm
8 trying to scam them or something. And so I'd have to
9 explain to them that no, in fact, if you want any
10 Republicans or any Democrats on the ballot, you have to
11 --- for those candidates somebody in your district,
12 some number of signature signers in your district in
13 the past have, in fact, signed petitions to place these
14 candidates on the ballot.

15 And then a lot of the times they'll say, well,
16 okay. Or let me take a look at it as long as I don't
17 have to give any personal information. At which point
18 in time if they do have to give personal information,
19 then I have to explain to them, you know, well, it just
20 goes to, you know, either the Secretary of State's
21 Office or to whoever the election authority is in that
22 state. And then, in fact, it is required for them to
23 access the ballot.

24 And there are other ---. There are many other
25 exclamations. It's not just that objection or

1 that ---. What do the voters think? The voters think
2 all different kinds of things. And they might say,
3 well, you know, can I sign for such and such a
4 candidate? Usually the candidate of their preference.
5 And if that candidate is in the stack of petitions that
6 I have, then I say, yes, and by the way ---.

7 I would say --- very, like almost every petition
8 signer in North Dakota, Gary Johnson was popular and I
9 was explaining to them that he was already on the
10 ballot. You know, we put him on previously in the
11 election cycle or the Libertarians had ballot access
12 because of our previous work in the election cycle.
13 I had to make it clear to them that I wasn't just a
14 partisan Libertarian or that I wasn't just a partisan,
15 a Constitution promoter, that I wasn't just a partisan
16 Green Party supporter.

17 And I would say that one-third of the people
18 primarily were stopping because they wanted Jill Stein
19 on the ballot and they were previous Bernie supporters.
20 And when I said can you sign for these other
21 candidates? They would say, of course, of course,
22 would be the typical response. So that leads me to
23 believe that they want multiple choices on the ballot
24 and only rarely would they expressly state that, but I
25 got many of courses throughout the day.

1 Q. And now ---.

2 A. And other variations of that. Sorry. I didn't
3 mean to ---.

4 Q. No. You were testifying, I was talking over you.
5 I apologize. Now, during this deposition Mr. Joel
6 asked you in all these various states that you
7 petitioned in, whether or not you circulated different
8 locations. Now in Pennsylvania you testified that you
9 circulated different locations previously, I believe?

10 A. Yes.

11 Q. And when you --- when you moved from one location
12 to another, does the in-state witness usually follow
13 you around to different parts of the state?

14 A. They have to. Oh, no, no. I'm sorry. There
15 would be a different witness in each congressional
16 district and a different witness for each candidate, of
17 course. Because a Democrat can't witness for Ted Cruz
18 and vice versa.

19 Q. Yeah. Okay.

20 A. So I had two witnesses at least in District 14 and
21 I had a witness in District 5 and I didn't do Rocky in
22 District 5.

23 Q. Okay. Does it take additional ---? Are you done?

24 A. Yeah. Yeah.

25 Q. Okay.

1 A. I did actually do Rocky in District 5, now that I
2 recall. So I had two witnesses in both.

3 Q. Okay. When you switch witnesses, does that impede
4 your ability to get up and running in the new district?

5 A. Yes.

6 Q. Why?

7 A. Every time that a witness is called to a petition
8 location, that impedes the gathering of signatures.
9 Like each and every day they're late a lot of times.
10 They say that they can't work that day, got to find a
11 different witness, whatever is, so ---. And if they
12 have to follow you to a different district because you
13 don't have like a Democrat in one district and you've
14 got the Democrat to go with you or you've got to get
15 the Republican to go with you, then that also will of
16 course be a huge obstacle. And of course a separate
17 hotel room in some cases would have to be provided for,
18 for that. So that increases the cost of the campaign.

19 Q. Now in your experience are witnesses paid per
20 signature or how --- are? Strike that.

21 In your experience how are witnesses paid in
22 Pennsylvania?

23 A. Almost everywhere witnesses are paid hourly.

24 Q. Okay.

25 A. Because they won't go out and produce.

1 Q. Okay.

2 A. If they are producing per signature, it's
3 commonplace to pay them some additional small amount on
4 top of what they're paid hourly. So that it in theory
5 works out to what the, you know, circulator is being
6 paid.

7 Q. Okay.

8 A. Although that's never the case, ---

9 Q. Okay.

10 A. --- generally speaking.

11 Q. Have you ever had a witness that ---?

12 A. Match my hourly rate?

13 Q. Yes.

14 A. No.

15 Q. Has there ever been a situation where you wanted
16 to move, like ---? Has there ever been a situation in
17 Pennsylvania where you wanted to move around and the
18 witness would not want to --- wanted to stay stationary
19 or ---?

20 A. Yes. However, that wasn't a significant
21 obstacle, because they were told, then, to listen to me
22 and to go where I wanted to go, in Pennsylvania. But
23 in Connecticut it was a big obstacle.

24 Q. Okay. How so?

25 A. There was a guy who was handicapped and couldn't

1 move around very well, so he just only wanted to stay
2 seated in one place.

3 Q. Okay.

4 A. And, you know, also generally objecting to --- you
5 know, he was also trying to get me to allow him to stay
6 at home and just lie. You know, like trying to
7 pressure me there. So I said, no, no, you have to come
8 out and sit in Walmart or wherever it was that I had
9 permission at that date.

10 Q. Okay.

11 A. And in Pennsylvania there is one additional
12 similar case where there was a problem where I was
13 petitioning and the witness got me kicked out of the
14 location. So just him being there ---

15 Q. How so?

16 A. --- attracted security onto himself and myself,
17 insisting that we leave. And they didn't leave, I'm
18 certain, because of me, because they approached him,
19 told him to stop loitering. And just for the record he
20 may have been racially profiled, African American. And
21 so he was told that he can't be loitering in front of
22 the store. And they said, and tell your buddy, you
23 know, to leave, too, you know.

24 Q. Okay. So this was a store or private property
25 kind of situation where ---?

1 A. And I saw them looking over at me, then, ---

2 Q. Okay.

3 A. --- when they came to talk to him. And so I
4 presume that they would not have even known that I was
5 around there if he had not been asked to leave. And so
6 then we had to get a new location, which that is
7 actually a very commonplace occurrence, where a witness
8 will unwittingly cause a petitioner to --- he has to
9 leave a location because they're standing around and
10 there are no loitering signs around. And so they don't
11 want some guy standing there all day, you know, ---

12 Q. Okay.

13 A. --- in the same place anyway. They tend to not
14 move around very much. Like they tend to not be doing
15 what I'm doing, which is going around asking people to
16 sign, which looks like a more natural action,
17 apparently, to people who may be sitting in front of a
18 security camera or security monitor.

19 Q. Now, in Pennsylvania the witness --- it's your
20 understanding that the witness has to execute the
21 affidavit to circulate; correct?

22 A. Correct.

23 Q. Now, there are hundreds of thousands of notary
24 publics in Pennsylvania, you're aware of that?

25 A. I was not aware of that, because I only know of

1 one of them who would agree to meet late at night.

2 Q. Okay. So late at night, why would you meet with a
3 notary late at night?

4 A. That's when I'm done petitioning for the day.

5 Q. Okay.

6 A. There were some people who interrupted their
7 petitioning day to go drive to a bank, get petition
8 signatures notarized and then drive back to a location.
9 Which if you consider it may be that the bank is even
10 30 or 40 minutes away and you've got to be there by
11 5:00 p.m. by the time the bank closes, that's ---.

12 Q. Okay.

13 A. And interruption of my day that I did not care to
14 do myself. I did not want to reduce by one or two
15 hours the amount of signatures that I was gathering in
16 the middle of the day.

17 Q. So stopping to get papers notarized limits your
18 ability to get signatures? You know, it takes ---

19 A. Yes.

20 Q. --- time away from your signature gathering?

21 A. Yes. In the middle of the day. And there are
22 peak hours and nonpeak hours during the day.

23 Q. What are those peak hours in general, in your
24 experience?

25 A. Morning rush hour, evening rush hour.

1 Q. Okay.

2 A. And lunchtime.

3 Q. So if you leave to get papers notarized around
4 four o'clock, you may miss a rush hour traffic?

5 A. Yeah. Or even a portion of it ---

6 Q. Okay.

7 A. --- would be detrimental to my day, because I may
8 get 60 signatures an hour during rush hour, whereas
9 I'll get three --- or, I'm sorry, 30 signatures, you
10 know, about half of that in a non-rush hour. Or even
11 like ten per hour in like between 2:00 and 3:00, you
12 know. So whether it's widely like that ---.

13 Q. You mentioned this one notary. So you had only
14 like one notary that you could rely on whereby you
15 could wait until 11 o'clock at night to get petitions
16 notarized. Is that what your testimony is?

17 ATTORNEY JOEL:

18 Objection.

19 A. One per each.

20 ATTORNEY ROSSI:

21 Yeah.

22 A. I'm sorry.

23 ATTORNEY ROSSI:

24 No, no. He's allowed to object. It's
25 okay. It was an appropriate objection. It was a long,

1 long-winded question. Let me break it down.

2 BY ATTORNEY JOEL:

3 Q. Was there an occasion ---? Was there ever an
4 occasion where you waited until 11 o'clock to notarize
5 your papers?

6 A. Yes, after 11:00, actually.

7 Q. Okay. And that occurred because you knew the
8 notary that would notarize that late at night?

9 A. Yes.

10 Q. And the witness went along with you ---

11 A. Yes.

12 Q. --- to that; correct? Was there ever a situation
13 where you could not get the papers notarized because
14 the witness would not be with you later in the day?

15 A. Yes.

16 Q. Explain how that happened.

17 A. Okay. In one case it didn't fit into the
18 witness's schedule to go and get the signatures
19 notarized. And so I knew that there was still time
20 remaining until the deadline. And I assumed I would be
21 working in the same place. And it turns out that we
22 needed more signatures in District 5 and that I had to
23 leave immediately to go to District 5 or it would not
24 succeed. So I immediately left and I said, look,
25 please don't fall off the face of the planet. I know

1 that happens a lot with witnesses. You know, we will
2 make it worth your while, just don't stop returning our
3 phone calls because I'm going to have to come back to
4 District 14 to have your signatures notarized that are
5 not notarized. And I called up the witness and said
6 that and he agreed that he would make himself available
7 later at that time.

8 And it wound up being where we thought for a while
9 that they were going to have to throw the signatures
10 out essentially, that they would not be counted,
11 because they wouldn't be able to be notarized. And we
12 were very concerned that all the people that signed
13 that would then be thinking that they had signed to
14 place these candidates on the ballot when, in fact,
15 they had not.

16 Q. Okay. Now you talked about Trent's father-in-law.
17 Is Trent married?

18 A. You know, technically it's his girlfriend.

19 Q. Okay.

20 A. They're planning on ---. They told me they're
21 planning on getting married, so I just ---.

22 Q. Oh. Okay. All right. That makes sense.

23 A. It's Kara's father.

24 Q. Kara, his girlfriend's father, that's where you
25 stayed at in Pittsburgh?

1 A. Yeah. He says she's his fiancée, I think.

2 Q. Okay. Now you said you do work with Andy Jacobs.
3 You have never been employed by ---? Let me ask ---
4 strike that.

5 Have you ever been employed by Andy Jacobs to
6 circulate petitions?

7 A. That's kind of an interesting question, because on
8 paper I was, I believe, employed by the campaigns.

9 Q. Okay.

10 A. And Andy set up the job, got me to come in to work
11 on the Jacob and paid. But I believe for the Wyoming
12 job, for example, and for the 2011 North Dakota ---

13 Q. Okay.

14 A. --- he may have been --- I may have been working
15 for American Liberty Consulting. I just remembered
16 that.

17 Q. Okay.

18 ATTORNEY ROSSI:

19 Okay. I think I'm done. Mr. Joel?

20 RE-EXAMINATION

21 BY ATTORNEY JOEL:

22 Q. You talked about calling that person, I guess it
23 was in the District 5, that story you were just
24 telling. Did you end up connecting with that person to
25 get everything notarized?

1 A. Yeah.

2 ATTORNEY JOEL:

3 Okay. Nothing else.

4 ATTORNEY ROSSI:

5 Very good. I'm done.

6 * * * * *

7 DEPOSITION CONCLUDED AT 4:11 P.M.

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1 COMMONWEALTH OF PENNSYLVANIA)

2 COUNTY OF BEDFORD)

3 CERTIFICATE

4 I, Bernadette M. Black, a Notary Public in
5 and for the Commonwealth of Pennsylvania, do hereby
6 certify:

7 That the foregoing proceedings, deposition of
8 Jacob Witmer was reported by me on 9/26/16 and that I,
9 Bernadette M. Black, read this transcript, and that I
10 attest that this transcript is a true and accurate
11 record of the proceeding.

12 That the witness was first duly sworn to
13 testify to the truth, the whole truth, and nothing but
14 the truth and that the foregoing deposition was taken
15 at the time and place stated herein.

16 I further certify that I am not a relative,
17 employee or attorney of any of the parties, nor a
18 relative or employee of counsel, and that I am in no
19 way interested directly or indirectly in this action.

20
21 COMMONWEALTH OF PENNSYLVANIA

Notarial Seal

Bernadette M. Black, Notary Public

Everett Boro, Bedford County

My Commission Expires Jan. 17, 2017

MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

Bernadette M. Black

Bernadette M. Black,

Court Reporter

24
25

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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**OPENPITTSBURGH.ORG and JAKE
WITMER**

Plaintiffs,

v.

**MARK WOLOSİK; in his official capacity as
Manager of the Allegheny County Division
of Elections; JOHN P. DEFAZIO, in his official
capacity as a Member of the Allegheny County
Board of Elections; RICH FITZGERALD,
In his official capacity as a Member of the
Allegheny Board of Elections; SAMUEL
DEMARCO III, in his official capacity as a
Member of the Allegheny County Board of
Elections; and KATHLEEN KANE, in her
official capacity as the Attorney General of the
Commonwealth of Pennsylvania**

Defendants.

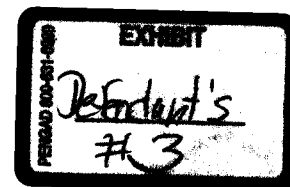
CIVIL ACTION

No _____

Filed Electronically

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Plaintiffs, OPENPITTSBURGH.ORG and JAKE WITMER, by and through their undersigned legal counsel, file this civil action for prospective equitable relief against defendants, MARK WOLOSİK, in his official capacity as Manager of the Allegheny County Division of Elections, JOHN P. DEFAZIO, in his official capacity as a Member and President of the Allegheny County Board of Elections, RICH FITZGERALD, in his official capacity as a Member of the



Allegheny County Board of Elections, SAMUEL DEMARCO III, in his official capacity as a Member of the Allegheny County Board of Elections, and KATHLEEN KANE, in her official capacity as the Attorney General of the Commonwealth of Pennsylvania, requesting temporary and permanent injunctions and declaratory relief prohibiting defendants from enforcing 53 Pa.C.S.A. § 2943(a) of the Pennsylvania Home Rule & Optional Plan Law to the extent it incorporates 25 P.S. § 2869 of the Pennsylvania Election Code on the circulation, signing, filing and adjudication of petitions to place a referendum question on the 2016 Pittsburgh general election ballot to the extent that 25 P.S. § 2869: (a) prohibits unregistered Pennsylvania voters from freely circulating referendum petitions under 53 Pa.C.S.A. § 2943(a); (b) prohibits non-Pennsylvanians from freely circulating referendum petitions under 53 Pa.C.S.A. § 2943(a); (c) requires plaintiffs to notarize each and every page of referendum petitions circulated and filed under 53 Pa.C.S.A. § 2943(a); and (d) prohibits unregistered electors from validly signing referendum petitions under 53 Pa.C.S.A. § 2943(a) in clear violation of rights guaranteed to plaintiffs under the First and Fourteenth Amendments to the United States Constitution and/or state statutory law.

NATURE OF THE COMPLAINT

2. This is an action to enforce rights guaranteed to plaintiffs under the First and Fourteenth Amendments to the United States Constitution, as well as a

pendent state law claim arising under the Constitution of Pennsylvania, the Home Rule & Optional Plan Law and the Pennsylvania Election Code.

3. The United States Supreme Court has established that the collection of signatures on referendum petitions is core political speech afforded the highest level of protection under the First and Fourteenth Amendments to the United States Constitution. *Meyer v. Grant*, 486 U.S. 414, 422 (1988). Restrictions that place a severe burden on core-political speech are subject to strict-scrutiny.

4. This is a civil rights action brought pursuant to 42 U.S.C. § 1983, seeking prospective equitable relief enjoining enforcement and declaring that certain of the combined requirements of 53 Pa.C.S.A. § 2943(a) and 25 P.S. § 2869 impairs clearly established rights guaranteed to plaintiffs under the First and Fourteenth Amendments to the United States Constitution and a pendent state law claim challenging defendants interpretation and enforcement of state statutory law.

5. Plaintiffs ask this Court for an immediate emergency temporary restraining order, and preliminary and permanent injunctions enjoining defendants from rejecting any referendum petition authorized to be circulated under 53 Pa.C.S.A. § 2943(a) where the referendum petition's "Affidavit of Qualified Elector" has been executed by: (a) an unregistered qualified elector of the Commonwealth of Pennsylvania; or (b) a resident of another state willing to

consent to the jurisdiction of the Commonwealth of Pennsylvania for purposes of any investigation related to the circulation, signing and filing of referendum petitions all in violation of rights guaranteed to plaintiffs under the First and Fourteenth Amendments to the United States Constitution.

6. Plaintiffs also ask this court to declare unconstitutional those provisions of 53 Pa.C.S.A. § 2943(a) and 25 P.S. § 2869 authorizing defendants to reject any referendum petition authorized to be circulated under 53 Pa.C.S.A. § 2943(a) where the referendum petition's "Affidavit of Qualified Elector" has been executed by: (a) an unregistered qualified elector of the Commonwealth of Pennsylvania; or (b) a resident of another state willing to consent to the jurisdiction of the Commonwealth of Pennsylvania for purposes of any investigation related to the circulation, signing and filing of referendum petitions in violation of rights guaranteed to plaintiffs under the First and Fourteenth Amendments to the United States Constitution.

7. Plaintiffs ask this Court for an immediate emergency temporary restraining order, and preliminary and permanent injunctions enjoining defendants from requiring, as a condition precedent to filing, that each circulator notarize each and every "Affidavit of Qualified Elector" for each page of the referendum petition circulated by the circulator as authorized under 53 Pa.C.S.A. § 2943(a) and pursuant to provisions of 25 P.S. § 2869 of the Pennsylvania Election Code

in violation of rights guaranteed to plaintiffs under the First and Fourteenth Amendments to the United States Constitution.

8. Plaintiffs also ask this court to declare unconstitutional those provisions of 53 Pa.C.S.A. § 2943(a) and 25 P.S. § 2869 requiring, as a condition precedent to filing with defendants, that each circulator notarize each and every “Affidavit of Qualified Elector” for each page of a referendum petitions circulated by the circulator as authorized under 53 Pa.C.S.A. § 2943(a) and pursuant to provisions of 25 P.S. § 2869 of the Pennsylvania Election Code in violation of rights guaranteed to plaintiffs under the First and Fourteenth Amendments to the United States Constitution.

9. Plaintiffs also ask this Court for an immediate emergency temporary restraining order, and preliminary and permanent injunctions enjoining defendants from requiring signers of referendum petitions authorized under 53 Pa.C.S.A. § 2943(a) and pursuant to provisions of 25 P.S. § 2869 of the Pennsylvania Election Code to be registered electors of the Commonwealth of Pennsylvania and permit unregistered electors to validly sign plaintiffs’ referendum petitions.

10. All of plaintiffs’ allegations are based upon their good faith information and belief after a reasonable investigation of the facts involved in this action.

JURISDICTION

11. Jurisdiction lies in this Court under 28 U.S.C. § 1331, providing that district courts shall have original jurisdiction of all civil actions arising under the Constitution of the United States.

12. Moreover, jurisdiction lies under 42 U.S.C. § 1983 and 28 U.S.C. § 1343(a), the jurisdictional counterpart of 42 U.S.C. § 1983 as Plaintiffs allege violation of rights guaranteed to them under the First Amendment, as applied to the states by the Fourteenth Amendment to the United States Constitution.

13. Jurisdiction of this court to adjudicate pendent state law claims in this action arise under 28 U.S.C. §1367(a), is authorized by Fed.R.Civ.P. 18(a) and is mandatory under the doctrine of supplemental jurisdiction as set forth in *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966). The pendent state law claims in this action arise out of a common nucleus of operative facts as the federal questions in this complaint and the state law claims form part of the same case or controversy.

VENUE

14. Venue is proper in the United States District Court for the Western District of Pennsylvania under 28 U.S.C. § 1391 as plaintiff Open Pittsburgh.Org is a resident of the district and defendants exercise their authority in the Western District of Pennsylvania, maintain offices within this district and all of the operative acts or omissions have or will occur in this district.

PARTIES

15. Plaintiff OpenPittsburgh.Org is an unincorporated grass-roots political organization seeking to place a referendum on the 2016 Pittsburgh general election ballot seeking to amend the Pittsburgh City Charter to demand greater governmental transparency and accountability by asking the following voter the following referendum question:

“Shall Pittsburgh's Charter be amended to delete Article 6: Community Advisory Boards (voided, Dec. 31, 2000) and substitute **Article 6: Open Government**, providing greater public disclosure; requiring public information, notices, and meetings be Internet accessible; setting applicable standards; creating a selectable notification process; and establishing an open membership Citizen Advisory Panel to which pending legislative and administrative actions must be explained and through which citizens can develop and provide information and comment before final approval?”

OpenPittsburgh.Org is currently circulating referendum petitions authorized to be circulated by Pennsylvania's Home Rule & Optional Plan Law to place the above referenced referendum question on Pittsburgh's 2016 general election ballot. Plaintiff OpenPittsburgh.Org is using volunteer and paid circulators to secure the required number of valid signatures Plaintiff OpenPittsburg.Org is headquartered at 304 Ross Street, STE 702, Pittsburgh, Pennsylvania. David Terence Tressitor is Chairman of OpenPittsburgh.Org and resides at 240 Chesterfield Road, Pittsburgh, Pennsylvania.

16. Plaintiff Jake Witmer is a professional circulator of election and referendum petitions and frequently works on election projects in the

Commonwealth of Pennsylvania. Because of the Commonwealth's prohibition on non-Pennsylvania residents from freely circulating referendum petitions and prohibits non-Pennsylvania residents or unregistered Pennsylvania residents from executing the "Affidavit of Circulator" made part of each referendum petition, plaintiff is not able to freely circulate referendum petitions for plaintiff OpenPittsburgh.Org, but would like to do so. Furthermore, plaintiff Witmer works for Benezet Consulting, LLC (hereinafter sometimes "Benezet") which is an out-of-state professional election and referendum circulation firm who placed a formal bid to circulate plaintiff OpenPittsburgh.Org's referendum petitions in July 2016, but was forced to charge an amount which included fees needed to pay Pennsylvania registered voters to tag along with Benezet's out-of-state professional circulators, as a direct and proximate result of the statutes challenged in this action, which caused Benezet's bid to be too expensive for plaintiff OpenPittsburgh.Org who had to decline Benezet's bid, which directly resulted in an economic loss to plaintiff Witmer because plaintiff Witmer is not able to circulate OpenPittsburgh.Org's referendum petitions as a professional circulator. Plaintiff Witmer is a resident and registered voter of Alaska. Plaintiff Witmer's resides at 6402 Hampton Drive, Anchorage, Alaska, 99504.

17. Defendant Mark Wolosik, is made a defendant to this action in his official capacity as the Manager of the Allegheny County Division of Elections.

As the manager of the Allegheny County Division of Elections, defendant Wolosik is charged with enforcement of the statutory provisions challenged in this action. Specifically, defendant Wolosik is the official responsible to enforce the challenged statutory provisions by either accepting or rejecting plaintiffs' referendum petitions as provided by law. Defendant Wolosik is charged with rejecting any referendum petition where the "Affidavit of Circulator" is not executed by a registered Pennsylvania voter, or is not properly notarized. Defendant Wolosik is also ultimately responsible for enforcing the unlawful interpretation that the challenged statutes mandate that only registered Pennsylvania qualified electors may lawfully record their signatures on plaintiffs' referendum petitions. Defendant Wolosik's business address is 542 Forbes Avenue, Room 604, Pittsburgh, Pennsylvania, 15219.

18. Defendant John P. DeFazio is made a defendant to this action in his official capacity as a Member and President of the Allegheny County Board of Elections charged with enforcing the statutes challenged in this action and the superior of defendant Wolosik. Defendant DeFazio's business address is 542 Forbes Avenue, Room 604, Pittsburgh, Pennsylvania, 15219.

19. Defendant Rich Fitzgerald is made a defendant to this action in his official capacity as a Member of the Allegheny County Board of Elections charged with enforcing the statutes challenged in this action and a Member of the

Board charged with oversight of defendant Wolosik. Defendant Fitzgerald's business address is 542 Forbes Avenue, Room 604, Pittsburgh, Pennsylvania, 15219.

20. Defendant Samuel Demarco III is made a defendant to this action in his official capacity as a Member of the Allegheny County Board of Elections charged with enforcing the statutes challenged in this action and a Member of the Board charged with oversight of defendant Wolosik. Defendant Demarco's business address is 542 Forbes Avenue, Room 604, Pittsburgh, Pennsylvania, 15219.

21. Defendant Kathleen Kane is made a defendant to this action in her official capacity as the Attorney General of the Commonwealth of Pennsylvania who is charged with the criminal and civil enforcement and defense of the statutes challenged in this action. Defendant Kane's business address in this district is 564 Forbes Avenue #6, Pittsburgh, PA 15219.

FACTS

22. The Pennsylvania Home Rule & Optional Plan Law authorizes citizens resident in municipalities operating under the Law to place certain binding referendum questions amending the municipal charter on the ballot to be decided by the voters at the next election. Pittsburgh operates under a Charter authorized under this law.

23. OpenPittsburgh.Org is circulating referendum petitions to place a referendum question on the 2016 Pittsburgh general election ballot to amend the Pittsburgh Charter.

24. 53 Pa.C.S.A. § 2943(a) provides that:

“A petition containing a proposal for referendum on the question of amending a home rule charter or an optional plan of government signed by electors comprising 10% of the number of electors voting for the office of Governor in the last gubernatorial general election in the municipality or an ordinance of the municipal governing body proposing amendment of a home rule charter or an optional plan shall be filed with the election officials not later than the 13th Tuesday prior to the next primary, municipal or general election. The petition and the proceedings therein shall be in the manner and subject to the provisions of the election laws which relate to the signing, filing and adjudication of nomination petitions insofar as such provisions are applicable, except that no referendum petition shall be signed or circulated prior to the 20th Tuesday before the election nor later than the 13th Tuesday before the election. The name and address of the person filing the petition shall be clearly stated on the petition.”

25. Plaintiff OpenPittsburgh.Org needs 7,582 valid signatures of electors to place their proposed referendum question on the 2016 Pittsburgh general election ballot.

26. The 7,582 valid signatures that plaintiff OpenPittsburgh.Org needs to place their proposed referendum question on the 2016 Pittsburgh general election ballot is 2,582 more valid signatures than statewide political bodies such as the Green, Libertarian and Constitution parties need to place their Presidential and Vice-Presidential candidates on the Commonwealth's general election ballot.

27. The circulation, signing, filing and adjudication of referendum petitions are, in relevant part, governed by 25 P.S. § 2869's provisions governing partisan nomination petitions which provides that:

"Said nomination petition may be on one or more sheets, and different sheets must be used for signers resident in different counties. If more than one sheet is used, they shall be bound together when offered for filing if they are intended to constitute one petition, and each sheet shall be numbered consecutively beginning with number one, at the foot of each page....Each sheet shall have appended thereto the affidavit of the circulator of each sheet, setting forth – (a) that he or she is a qualified elector duly registered and enrolled as a member of the designated party of the State, or of the political district, as the case may be, referred to in said petition, unless said petition relates to the nomination of a candidate for a court of common pleas, for the Philadelphia Municipal Court or for the Traffic Court of Philadelphia or for justice of the peace, in which even the circulator need not be a duly registered and enrolled member of the designated party; (b) his residence, giving city, borough or township, with street number, if any; (c) that the signers thereto signed with full knowledge of the contents of the petition; (d) that their respective residences are correctly stated therein; (e) that they all reside in the county named in the affidavit; (f) that each signed on the date set opposite his name; and (g) that, to the best of affiant's knowledge and belief, the signers are qualified electors and duly registered and enrolled members of the designated party of the State, or of the political district, as the case may be."

28. As a result of the combined effect of, 53 Pa.C.S.A. § 2943(a) and 25 P.S. § 2869 the referendum petitions circulated by plaintiff OpenPittsburgh.Org may not be freely circulated by either: (1) unregistered Pennsylvania citizens; or, (2) out-of-state residents, regardless of their registration status, because only registered voters of Pennsylvania may execute the "Affidavit of Qualified Elector" made part of each and every sheet of the referendum petition.

29. In combination, 53 Pa.C.S.A. § 2943(a) and 25 P.S. § 2869 require unregistered Pennsylvania residents and out-of-state circulators to team up with registered Pennsylvania voters who must tag along and “witness” the signatures recorded on the referendum petitions so that the registered Pennsylvania voters can lawfully execute the “Affidavit of Qualified Elector” made part of each and every page of the referendum petition.

30. Defendants are authorized to strike and refuse the filing any referendum petition when the “Affidavit of Qualified Elector” is executed by anyone who is not a registered elector of the Commonwealth of Pennsylvania. The registered voter requirement and the out-of-state circulator restriction imposes an unconstitutional impairment of plaintiffs’ right to free speech, petition and association as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

31. The registered voter requirement and the out-of-state circulator restriction imposed by 25 P.S. § 2869 imposes a severe burden on speech and is not narrowly tailored to effectuate a compelling state interest. As explained by the overwhelming majority of federal district and circuit courts of appeals, any alleged compelling governmental interest advanced by statutes identical to 25 P.S. § 2869 is more narrowly and fully advanced – without the need to impair any First Amendment guarantees – by requiring affiants to submit to the Commonwealth’s

jurisdiction for the purpose of any subsequent investigation, prosecution and adjudication of alleged election petition fraud.

32. There is no regulatory interest advanced by the registered voter requirement and the out-of-state circulator restriction imposed by 25 P.S. § 2869 sufficient to justify the severe impairment of plaintiffs' speech, petition and association protected under the First and Fourteenth Amendments to the United States Constitution.

33. The registered voter requirement and the out-of-state circulator restriction imposed by 25 P.S. § 2869 in the circulation of referendum petitions limited circulator's ability to advance and spread the message of plaintiff OpenPittsburgh.Org by limiting plaintiff OpenPittsburgh.Org to use registered Pennsylvania voters and forgo unregistered Pennsylvania voters and out-of-state circulators, including professional out-of-state election petition circulators, because the time and effort required to "marry" unregistered and/or out-of-state circulators to an Pennsylvania registered voter expends valuable time and resources that OpenPittsburgh.Org must dedicate to

34. The requirement that plaintiff OpenPittsburgh.Org must "marry" a registered Pennsylvania voter with volunteer and/or paid circulators who are not registered Pennsylvania voters and/or out-of-state residents directly impairs plaintiff OpenPittsburgh.Org ability to secure the number of signatures required to

place their proposed referendum question on the 2016 Pittsburgh general election ballot.

35. The requirement that plaintiff OpenPittsburgh.Org must “marry” a registered Pennsylvania voter with volunteer and/or paid circulators who are not registered Pennsylvania voters and/or out-of-state residents increases the amount of time it takes to secure the number of signatures required to place their proposed referendum question on the 2016 Pittsburgh general election ballot.

36. The requirement that plaintiff OpenPittsburgh.Org must “marry” a registered Pennsylvania voter with volunteer and/or paid circulators who are not registered Pennsylvania voters and/or out-of-state residents increases the costs to plaintiff OpenPittsburgh.Org to secure the number of signatures required to place their proposed referendum question on the 2016 Pittsburgh general election ballot because the inefficiency in circulating a single referendum petition with 2 people lengthens the time it will take plaintiffs to secure the necessary signature, thereby increasing the number of signatures that OpenPittsburgh.Org must pay to professional circulators (increasing the time it takes to gather the necessary signatures increases the amount of time professional circulators have to gather more signatures that OpenPittsburgh.Org must pay to the professional circulators).

37. The requirement that circulators must be registered Pennsylvania voters means that any unregistered Pennsylvania resident who wishes to circulate

plaintiff OpenPittsburgh.Org's referendum petition must be accompanied by a Pennsylvania registered voter willing to follow the unregistered circulator around while he/she circulates the petition.

38. Plaintiff OpenPittsburgh.Org has unregistered Pennsylvania residents who are willing but cannot circulate plaintiff's referendum petition for the sole reason that they, while qualified to register to vote in Pennsylvania, are not registered to vote in the Commonwealth of Pennsylvania.

39. The requirement that circulators must be registered Pennsylvania voters means that any out-of-state circulators who wish to circulate plaintiff OpenPittsburgh.Org's referendum petition must be accompanied by a Pennsylvania registered voter willing to follow the unregistered circulator around while he/she circulates the petition, and limited to the time and place of the Pennsylvania registered voter's choosing.

40. Plaintiff Witmer is an out-of-state professional circulator who is willing to circulate plaintiff OpenPittsburgh.Org's referendum petition but is not able to do so without being accompanied by a Pennsylvania registered voter, limiting the amount of time that he would be able to circulate the referendum petition.

41. Plaintiff Witmer, as a condition precedent to the right to circulate referendum petitions in the Commonwealth of Pennsylvania, is expressly willing

to execute any document necessary to submit himself to the jurisdiction of the Commonwealth of Pennsylvania for any investigation or adjudicatory proceeding that may arise as a result of his circulation of referendum petitions in the Commonwealth.

42. Because of the additional cost of paying registered Pennsylvania voters to accompany professional circulators out-of-state as a direct and proximate result of 53 Pa.C.S.A. § 2943(a) and 25 P.S. § 2869, out-of-state professional circulators are not price competitive with in-state circulators in bidding for the right to circulate referendum petitions, limiting the pool of available professional circulators to plaintiff OpenPittsburgh.Org.

43. Evidence of past election petition signature drives shows that in-state professional circulators attain a substantially lower validity rate than out-of-state professional circulators thereby imposing increased costs on OpenPittsburgh.Org through the need to collect and pay for the additional signatures needed to make-up for the substantially lower validity rate of in-state professional circulators.

44. Limiting the pool of professional circulators to in-state professionals creates a monopoly for Pennsylvania professional circulators, thereby decreasing the ability of plaintiff OpenPittsburgh.Org to negotiate favorable contract terms, with the effect of dramatically increasing the cost of referendum petition signature drives.

45. As a direct and proximate result of 53 Pa.C.S.A. § 2943(a) and 25 P.S. § 2869 plaintiff OpenPittsburgh.Org was not able to hire Benezet, plaintiff Witmer's out-of-state professional circulator firm, thereby depriving plaintiff Witmer's of both the economic opportunity and the ability to associate with the voters of Pennsylvania to advance the political agenda of plaintiff OpenPittsburgh.Org by circulating OpenPittsburgh.Org's referendum petitions.

46. In combination, 53 Pa.C.S.A. § 2943(a) and 25 P.S. § 2869 places a severe burden on the First Amendment speech of OpenPittsburgh.Org by making it more difficult for it to disseminate its political views, choose the most effective way of conveying its message, to associate in a meaningful way with prospective circulators of its referendum petition for the purpose of eliciting political change, to gain access to the general election ballot, and to utilize the public endorsement of circulators which can be implicit in a circulator's efforts to gather signatures on OpenPittsburgh.Org's behalf.

47. The combined requirement of 53 Pa.C.S.A. § 2943(a) and 25 P.S. § 2869 that each and every "Affidavit of Circulator" made part of each and every nomination petition page, be notarized imposes a severe economic and logistical burden on plaintiff OpenPittsburgh.Org.

48. Notarizations in Pennsylvania typically cost \$5.00 per acknowledgement imposing upon plaintiff OpenPittsburgh.Org a substantial

economic cost to notarize the 12,000 to 15,000 signatures typically required to make sure they collect and file the required number of 7,582 valid signatures to secure access to the 2016 Pittsburgh general election ballot.

49. The notarization requirement for each page of the referendum petition adds an additional step, including the time to locate and travel to a notary public, which decreases the amount of time a circulator has to gather valid signatures, communicate the message of political change espoused by plaintiff OpenPittsburgh.Org, and associate with the residents and voters of Pittsburgh – all in the context of the compressed time period allowed by the Home Rule & Optional Plan Law to gather signatures.

50. The significant costs imposed by the notarization requirement has caused plaintiff to design referendum petitions of larger size, to reduce the number of notarizations required; which leads to an extended time period that the petitions are in the field exposed to the elements and the wear and tear of prolonged handling by circulators which tends to degrade the readability of the signatures recorded on the referendum petitions, which in turn, leads to a larger number of invalidated signatures impairing otherwise valid core political speech.

51. Plaintiff's effort to reduce the number of notarizations by placing as many signatures as possible on each petition page has also resulted in a reduction of the space allowed for each signatures, thereby making it more difficult for

voters to legibly record their information on the referendum petitions, resulting in a likely increase in the number of signatures ruled invalid by defendants and/or challenged by potential challengers as illegible.

52. In *Green Party of Pennsylvania v. Aichele*, the United States District Court for the Eastern District of Pennsylvania ruled a cognate notarization requirement for petition papers (circulated by political bodies) unconstitutional.

53. The notarization requirement of the “Affidavit of Qualified Elector” is a ministerial requirement which places a severe restriction on core political speech that is not narrowly tailored to advance a compelling governmental interest.

54. 53 Pa.C.S.A § 2943(a) provides in relevant part that: “A petition containing a proposal for referendum on the question of amending a home rule charter or an optional plan of government signed by electors comprising 10% of the number of electors voting for the office of Governor in the last gubernatorial general election in the municipality....shall be filed with the election officials not later than the 13th Tuesday prior to the next primary, municipal or general election. 53 Pa.C.S.A. § 2943(a) further provides that: “The petition and the proceedings therein shall be in the manner and subject to the provisions of the election laws which relate to the signing, filing and adjudication of nomination petitions insofar as such provisions are applicable.”

55. In *In re the Nomination Petition of Vodvarka*, 126 MD 2016, 37 MAP 2016 (Pa. April 19, 2016) the Supreme Court of Pennsylvania unanimously admitted, in a 6-0 decision, that it had previously “erroneously confused electors who were **qualified** to vote with electors who were **registered** to vote....Pursuant to Article VII, Section 1 of the Pennsylvania Constitution..., a person is qualified to vote if they meet the three constitutional qualifications (age, citizenship and residency) in subsections 1, 2 and 3....A qualified elector may register to vote by satisfying legislatively-enacted voter registration requirements....” *Id.* at Opinion, note #10, pp. 13-14.

56. While 25 P.S. § 2869 imposes the requirement that electors who sign partisan nomination petition must be “registered and enrolled members of the designated party of the State” such a “registered and enrolled” requirement is not applicable under Section 2943(a) of the Pennsylvania Home Rule & Optional Plan Law which only mandates that plaintiff OpenPittsburgh.Org’s referendum petition be signed by electors comprising 10% of those who voted in Pittsburgh for Governor in 2014. The “registered and enrolled” requirement of 25 P.S. § 2869 relates to a partisan primary election (protecting the First Amendment rights of political parties to ensure only their party members select the party’s standard-bearer), a referendum is a non-partisan election such that the “registered and enrolled” provisions of 25 P.S. § 2869 are not applicable and are, therefore,

expressly excluded by the “insofar as such provisions are applicable” clause of 53 Pa.C.S.A. § 2943(a).

57. Because the “registered and enrolled” requirement for signers of partisan nomination petitions is not applicable to a non-partisan referendum elections, and because 53 Pa.C.S.A. § 2943(a) merely provides that signers of plaintiff OpenPittsburgh.Org’s referendum petition be “electors” without any additional limiting qualifications, and because the Pennsylvania Supreme Court has recently clarified that “electors” need only meet the State Constitution requirements of age, citizenship and residency, defendants cannot lawfully require signers of plaintiff OpenPittsburgh.Org’s referendum petitions to be registered qualified electors.

58. Plaintiffs have no other adequate remedy at law.

FEDERAL CONSTITUTIONAL CLAIMS

COUNT I – FACIAL CHALLENGE

(The Voter Registration Requirement for Circulators of Referendum Petitions under 53 Pa.C.S.A. § 2943(a) and 25 P.S. §2869 is a Facial Impairment of Rights Guaranteed to Plaintiffs under the First and Fourteenth Amendments to the United States Constitution)

59. Plaintiffs reassert each preceding allegation as if set forth fully herein.

60. The circulation of referendum petitions as defined by 53 Pa.C.S.A. § 2943(a) and 25 P.S. §2869 is core political speech protected by the First Amendment to the United States Constitution.

61. The voter registration requirement imposed on those who execute the “Affidavit of Qualified Elector” of referendum petitions contained in 53 Pa. C.S.A. § 2943(a) of the Pennsylvania Home Rule & Optional Plan Law and 25 P.S. § 2869 of the Pennsylvania Election Code places a severe burden on core political speech and is subject to strict scrutiny.

62. The voter registration requirement imposed on those who execute the “Affidavit of Qualified Elector” of referendum petitions is not narrowly tailored to advance a compelling governmental interest.

63. Alternatively, because no state regulatory interests justify the voter registration requirement imposed on those who execute the “Affidavit of Qualified Elector” of referendum petition, the voter registration requirement violates the First Amendment to the United States Constitution, as incorporated to the States by the Fourteenth Amendment to the United States Constitution .

64. Defendants are state actors charged with enforcement of 53 Pa. C.S.A. § 2943(a) and 25 P.S. § 2869 against plaintiffs.

65. Defendants, pursuant to the Pennsylvania Home Rule & Optional Plan Law and the Pennsylvania Election Code, are required to reject any

referendum petition sought to be filed by plaintiffs if it contains material errors or defects apparent on the face thereof, or on the face of the appended or accompanying affidavits; or if it contains material alterations made after signing without the consent of the signers; or it does not contain a sufficient number of signatures as required by law.

66. Accordingly, defendants enforcement of 53 Pa.C.S.A. § 2943(a) and 25 P.S. § 2869 is the direct and proximate cause of the impairment of rights guaranteed to plaintiffs under the First Amendment to the United States Constitution of the United States for which plaintiffs request relief.

COUNT II – AS APPLIED CHALLENGE

(The Voter Registration Requirement for Circulators As Applied to the Circulation of Referendum Petitions under 53 Pa.C.S.A. § 2943(a) and 25 P.S. §2869 is an Impairment of Rights Guaranteed to Plaintiffs under the First and Fourteenth Amendments to the United States Constitution)

67. Plaintiffs reassert each preceding allegation as if set forth fully herein.

68. The circulation of referendum petitions as defined by 53 Pa.C.S.A. § 2943(a) and 25 P.S. §2869 is core political speech protected by the First Amendment to the United States Constitution.

69. The voter registration requirement imposed on those who execute the “Affidavit of Qualified Elector” as applied to the circulation of referendum petitions contained in 53 Pa. C.S.A. § 2943(a) of the Pennsylvania Home Rule &

Optional Plan Law and 25 P.S. § 2869 of the Pennsylvania Election Code places a severe burden on core political speech and is subject to strict scrutiny.

70. The voter registration requirement imposed on those who execute the “Affidavit of Qualified Elector” as applied to the circulation of referendum petitions is not narrowly tailored to advance a compelling governmental interest.

71. Alternatively, because no state regulatory interests justify the voter registration requirement imposed on those who execute the “Affidavit of Qualified Elector” of referendum petition, the voter registration requirement as applied to the circulation of referendum petitions violates the First Amendment to the United States Constitution, as incorporated to the States by the Fourteenth Amendment to the United States Constitution .

72. Defendants are state actors charged with enforcement of 53 Pa. C.S.A. § 2943(a) and 25 P.S. § 2869 against plaintiffs.

73. Defendants, pursuant to the Pennsylvania Home Rule & Optional Plan Law and the Pennsylvania Election Code, are required to reject any referendum petition sought to be filed by plaintiffs if it contains material errors or defects apparent on the face thereof, or on the face of the appended or accompanying affidavits; or if it contains material alterations made after signing without the consent of the signers; or it does not contain a sufficient number of signatures as required by law.

74. Accordingly, defendants enforcement of 53 Pa.C.S.A. § 2943(a) and 25 P.S. § 2869 is the direct and proximate cause of the impairment of rights guaranteed to plaintiffs under the First Amendment to the United States Constitution of the United States for which plaintiffs request relief.

COUNT III – FACIAL CHALLENGE

(The Restriction on Out-of-State Circulators of Referendum Petitions under 53 Pa.C.S.A. § 2943(a) and 25 P.S. §2869 is a Facial Impairment of Rights Guaranteed to Plaintiffs under the First and Fourteenth Amendments to the United States Constitution)

75. Plaintiffs reassert each preceding allegation as if set forth fully herein.

76. The circulation of referendum petitions as defined by 53 Pa.C.S.A. § 2943(a) and 25 P.S. §2869 is core political speech protected by the First Amendment to the United States Constitution.

77. The prohibition on out-of-state circulators executing the “Affidavit of Qualified Elector” of referendum petitions, for circulators willing to submit to the jurisdiction of the Commonwealth of Pennsylvania , contained in 53 Pa. C.S.A. § 2943(a) of the Pennsylvania Home Rule & Optional Plan Law and 25 P.S. § 2869 of the Pennsylvania Election Code places a severe burden on core political speech and is subject to strict scrutiny.

78. The prohibition on out-of-state circulators executing the “Affidavit of Qualified Elector” of referendum petitions, for circulators willing to submit to the

jurisdiction of the Commonwealth of Pennsylvania , is not narrowly tailored to advance a compelling governmental interest.

79. Alternatively, because no state regulatory interests justify the prohibition on out-of-state circulators executing the “Affidavit of Qualified Elector” of referendum petitions, for circulators willing to submit to the jurisdiction of the Commonwealth of Pennsylvania, the out-of-state circulator ban violates the First Amendment to the United States Constitution, as incorporated to the States by the Fourteenth Amendment to the United States Constitution .

80. Defendants are state actors charged with enforcement of 53 Pa. C.S.A. § 2943(a) and 25 P.S. § 2869 against plaintiffs.

81. Defendants, pursuant to the Pennsylvania Home Rule & Optional Plan Law and the Pennsylvania Election Code, are required to reject any referendum petition sought to be filed by plaintiffs if it contains material errors or defects apparent on the face thereof, or on the face of the appended or accompanying affidavits; or if it contains material alterations made after signing without the consent of the signers; or it does not contain a sufficient number of signatures as required by law.

82. Accordingly, defendants enforcement of the out-of-state circulator ban contained in 53 Pa.C.S.A. § 2943(a) and 25 P.S. § 2869 is the direct and proximate cause of the impairment of rights guaranteed to plaintiffs under the

First Amendment to the United States Constitution of the United States for which plaintiffs request relief.

COUNT IV – AS APPLIED CHALLENGE
(The Restriction on Out-of-State Circulators As Applied to Referendum
Petitions under 53 Pa.C.S.A. § 2943(a) and 25 P.S. §2869 is a Facial
Impairment of Rights Guaranteed to Plaintiffs under the First and
Fourteenth Amendments to the United States Constitution)

83. Plaintiffs reassert each preceding allegation as if set forth fully herein.

84. The circulation of referendum petitions as defined by 53 Pa.C.S.A. § 2943(a) and 25 P.S. §2869 is core political speech protected by the First Amendment to the United States Constitution.

85. The prohibition on out-of-state circulators, as applied to the execution of the “Affidavit of Qualified Elector” of referendum petitions, for circulators willing to submit to the jurisdiction of the Commonwealth of Pennsylvania , contained in 53 Pa. C.S.A. § 2943(a) of the Pennsylvania Home Rule & Optional Plan Law and 25 P.S. § 2869 of the Pennsylvania Election Code places a severe burden on core political speech and is subject to strict scrutiny.

86. The prohibition on out-of-state circulators, as applied to the execution of the “Affidavit of Qualified Elector” of referendum petitions, for circulators willing to submit to the jurisdiction of the Commonwealth of

Pennsylvania , is not narrowly tailored to advance a compelling governmental interest.

87. Alternatively, because no state regulatory interests justify the prohibition on out-of-state circulators, as applied to the execution of the “Affidavit of Qualified Elector” of referendum petitions, for circulators willing to submit to the jurisdiction of the Commonwealth of Pennsylvania, the out-of-state circulator ban violates the First Amendment to the United States Constitution, as incorporated to the States by the Fourteenth Amendment to the United States Constitution .

88. Defendants are state actors charged with enforcement of 53 Pa. C.S.A. § 2943(a) and 25 P.S. § 2869 against plaintiffs.

89. Defendants, pursuant to the Pennsylvania Home Rule & Optional Plan Law and the Pennsylvania Election Code, are required to reject any referendum petition sought to be filed by plaintiffs if it contains material errors or defects apparent on the face thereof, or on the face of the appended or accompanying affidavits; or if it contains material alterations made after signing without the consent of the signers; or it does not contain a sufficient number of signatures as required by law.

90. Accordingly, defendants enforcement of the out-of-state circulator ban contained in 53 Pa.C.S.A. § 2943(a) and 25 P.S. § 2869 as applied to the

circulation of referendum petitions is the direct and proximate cause of the impairment of rights guaranteed to plaintiffs under the First Amendment to the United States Constitution of the United States for which plaintiffs request relief.

COUNT V – FACIAL CHALLENGE

(Defendants' Enforcement of 53 Pa.C.S.A. § 2943(a) and 25 P.S. §2869 Requiring Plaintiffs to Notarize Every Page of the Referendum Petition is a Facial Impairment of Rights Guaranteed to Plaintiffs under the First and Fourteenth Amendments to the United States Constitution)

91. Plaintiffs reassert each preceding allegation as if set forth fully herein.

92. The circulation of referendum petitions as defined by 53 Pa.C.S.A. § 2943(a) of the Pennsylvania Home Rule & Optional Plan Law and 25 P.S. § 2869 of the Pennsylvania Election Code is core political speech protected by the First Amendment to the United States Constitution.

93. Signatures recorded on referendum petitions as defined by 53 Pa.C.S.A. § 2943(a) of the Pennsylvania Home Rule & Optional Plan Law and 25 P.S. § 2869 of the Pennsylvania Election Code is core political speech protected by the First Amendment to the United States Constitution.

94. Defendants' enforcement of 53 Pa.C.S.A. § 2943(a) and 25 P.S. § 2869 requiring witnesses of referendum petition circulation to secure a sworn affidavit from a notary public for each page of a referendum petition places a severe burden on core political speech and is subject to strict scrutiny.

95. Because defendants' enforcement of 53 Pa.C.S.A. § 2943(a) and 25 P.S. § 2869 requiring witnesses of referendum petition circulation to secure a sworn affidavit from a notary public for each page of a referendum petition is not narrowly tailored to further a compelling governmental interest, the provision facially violates the First Amendment to the United States Constitution, as incorporated to the States by the Fourteenth Amendment to the United States Constitution.

96. Alternatively, because no state regulatory interests justify defendants' enforcement of the affidavit requirement of 53 Pa.C.S.A. § 2943(a) and 25 P.S. § 2869, defendants' enforcement of the provision violates the First Amendment to the United States Constitution, as incorporated to the States by the Fourteenth Amendment to the United States Constitution.

97. Defendants are state actors charged with enforcement of 53 Pa.C.S.A. § 2943(a) and 25 P.S. § 2869 against plaintiffs.

98. Defendants, pursuant to 25 P.S. § 2936 of the Pennsylvania Election Code, are required to reject any nomination paper sought to be filed by plaintiffs if it contains material errors or defects apparent on the face thereof, or on the face of the appended or accompanying affidavits; or if it contains material alterations made after signing without the consent of the signers; or it does not contain a sufficient number of signatures as required by law.

99. Accordingly, defendants enforcement of the affidavit requirement of 53 Pa.C.S.A. § 2943(a) and 25 P.S. § 2869 is the direct and proximate cause of the impairment of rights guaranteed to plaintiffs under the First Amendment to the United States Constitution of the United States for which plaintiffs request relief.

**COUNT VI – AS APPLIED CHALLENGE
(Defendants’ Enforcement of 53 Pa.C.S.A. § 2943(a) and 25 P.S. §2869 As
Applied to the Requirement that Plaintiffs Notarize Every Page of the
Referendum Petition is an Impairment of Rights Guaranteed to Plaintiffs
under the First and Fourteenth Amendments to the United States
Constitution)**

100. Plaintiffs reassert each preceding allegation as if set forth fully herein.

101. The circulation of referendum petitions as defined by 53 Pa.C.S.A. § 2943(a) of the Pennsylvania Home Rule & Optional Plan Law and 25 P.S. § 2869 of the Pennsylvania Election Code is core political speech protected by the First Amendment to the United States Constitution.

102. Signatures recorded on referendum petitions as defined by 53 Pa.C.S.A. § 2943(a) of the Pennsylvania Home Rule & Optional Plan Law and 25 P.S. § 2869 of the Pennsylvania Election Code is core political speech protected by the First Amendment to the United States Constitution.

103. Defendants’ enforcement of 53 Pa.C.S.A. § 2943(a) and 25 P.S. § 2869, as applied to the requirement that witnesses of referendum petition circulation secure a sworn affidavit from a notary public for every page of a

referendum petition places a severe burden on core political speech and is subject to strict scrutiny.

104. Because defendants' enforcement of 53 Pa.C.S.A. § 2943(a) and 25 P.S. § 2869 as applied to the requirement that witnesses of referendum petition circulation secure a sworn affidavit from a notary public for every page of a referendum petition is not narrowly tailored to further a compelling governmental interest, the provision facially violates the First Amendment to the United States Constitution, as incorporated to the States by the Fourteenth Amendment to the United States Constitution.

105. Alternatively, because no state regulatory interests justify defendants' enforcement of the affidavit requirement of 53 Pa.C.S.A. § 2943(a) and 25 P.S. § 2869 as applied to referendum petitions, defendants' enforcement of the provision violates the First Amendment to the United States Constitution, as incorporated to the States by the Fourteenth Amendment to the United States Constitution.

106. Defendants are state actors charged with enforcement of 53 Pa.C.S.A. § 2943(a) and 25 P.S. § 2869 against plaintiffs.

107. Defendants, pursuant to 25 P.S. § 2936 of the Pennsylvania Election Code, are required to reject any nomination paper sought to be filed by plaintiffs if it contains material errors or defects apparent on the face thereof, or on the face of the appended or accompanying affidavits; or if it contains material alterations

made after signing without the consent of the signers; or it does not contain a sufficient number of signatures as required by law.

108. Accordingly, defendants enforcement of the affidavit requirement of 53 Pa.C.S.A. § 2943(a) and 25 P.S. § 2869 as applied to referendum petitions is the direct and proximate cause of the impairment of rights guaranteed to plaintiffs under the First Amendment to the United States Constitution of the United States for which plaintiffs request relief.

PENDENT STATE LAW CLAIM

COUNT VII

(Defendants Lack Statutory Authority to Prohibit Unregistered Electors from Validly Signing Plaintiff OpenPittsburgh.Org's Referendum Petition)

109. Plaintiffs reassert each preceding allegation as if set forth fully herein.

110. The Supreme Court of Pennsylvania recently defined an "elector" as a resident and citizen of the Commonwealth of Pennsylvania who has attained the age of 18.

111. Referendums are non-partisan elections.

112. 53 Pa.C.S.A. § 2943(a) requires that plaintiff OpenPittsburgh.Org collect valid signatures from 7,582 Pittsburgh electors.

113. 53 Pa.C.S.A. § 2943(a) further provides that the signing, filing and adjudication of non-partisan referendum petitions are subject to the provisions of

the election laws governing partisan nomination petitions only “insofar as such provisions are applicable.”

114. Accordingly, defendants lack statutory authority to require that only registered electors may validly sign plaintiff OpenPittsburgh.Org’s referendum petitions.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- a. Enter declaratory judgment against all challenged provisions of 53 Pa.C.S.A. § 2943(a) and 25 P.S. § 2869 as detailed in Counts I through VI above, or any combination thereof;
- b. Enter an emergency temporary restraining order, on or before August 1, 2016, enjoining defendants from enforcing the challenged provisions and interpretations of 53 Pa.C.S.A. § 2943(a) and 25 P.S. § 2869 as detailed in Counts I through VI above, or any combination thereof, against all plaintiffs now and in the future;
- c. Permanently enjoin defendants from enforcing the challenged provisions of 53 Pa.C.S.A (a) and 25 P.S. § 2869 for referendum petitions now and in the future;
- d. Enter an emergency temporary restraining order, on or before August 1, 2016, enjoining defendants from striking otherwise valid

signatures of unregistered electors from plaintiffs' referendum petitions as detailed in Count VII against all plaintiffs now and in the future;

- e. Permanently enjoin defendants from striking otherwise valid signatures from referendum petitions of unregistered electors as detailed in Count VII against all plaintiffs now and in the future;
- f. Award plaintiffs the cost of this action together with their reasonable attorneys' fees and expenses pursuant to 42 U.S.C. § 1988; and,
- g. Retain jurisdiction of this action and grant plaintiffs such other relief which may in the determination of this Honorable Court to be necessary and proper.

Dated: July 21, 2016

Respectfully submitted,

/s/ Lawrence M. Otter

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